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Mohd Ya'cob bin Demyati lwn Pendakwa Raya

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MAHKAMAH RAYUAN (PUTRAJAYA) — RAYUAN JENAYAH NO N-05–44 TAHUN 2002
ZALEHA ZAHARI, WAN ADNAN MUHAMAD DAN AHMAD MAAROP HHMR
29 AUGUST 2008

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Keterangan — Kenyataan — Kenyataan tertuduh kepada polis — Maklumat membawa kepada fakta yang ditemui — Kebolehterimaan kenyataan — Sama ada maklumat berkaitan fakta yang ditemui — Sama ada fakta yang ditemui mengikut maklumat — Sama ada maklumat diberi tanpa paksaan — Sama ada maklumat boleh diterima — Akta Keterangan 1950 s 27

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Undang-Undang Jenayah — Kanun Keseksaan — s 302 — Pembunuhan — Rayuan terhadap sabitan dan hukuman — Maklumat tertuduh membawa kepada penemuan mayat di tepi jalan — Sama ada maklumat diterima sewajarnya — Sama ada rasa cemburu dan marah motif yang cukup untuk menyokong kes pihak pendakwaan — Sama ada keterangan ikut keadaan mencukupi untuk mensabitkan tertuduh — Sama ada kes prima facie dibuktikan — Sama ada kelewatan menulis alasan-alasan penghakiman memprejudis tertuduh

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Tertuduh ('perayu') telah dituduh dan disabitkan dengan pembunuhan seorang bernama Along, kesalahan yang boleh dihukum di bawah s 302 Kanun Keseksaan ('Kanun'). Pembunuhan tersebut dikatakan telah berlaku pada 26 Disember 1999 sekitar 1 pagi di tepi jalan di KM 28 Jalan Kelawang-Genting Peras di Negeri Sembilan ('KM 28'). Pada 5 Januari 2000, perayu telah ditangkap. Pada 6 Januari 2000 dia telah disoal oleh DSP Nor Azizan ('SP25'). Semasa menjalankan penyoalan tersebut, perayu telah memberikan SP25 maklumat tertentu yang mana telah direkodkan secara bertulis oleh SP25 di dalam P32. Selepas perbicaraan dalam perbicaraan, hakim bicara memutuskan maklumat di dalam P32 diterima sebagai keterangan di bawah s 27 Akta Keterangan 1950 ('Akta'). Dengan ringkas, perayu telah menyatakan bahawa dia telah mengisi mayat Along ke dalam karung guni dan telah mencampakkannya di tepi jalan di KM 28 dan perayu telah bersetuju untuk menunjukkan tempat tersebut. Perayu kemudiannya telah membawa SP25 dan kumpulan polis ke KM 28, di mana perayu telah menunjukkan ke arah sebuah lereng. Selepas pencarian segera, karung guni ('P23') yang mana hujungnya diikat telah dijumpai di dalam semak. P23 didapati mengandungi mayat Along. Peguam yang bijaksana bagi perayu berhujah bahawa polis, sebelum 6 Januari 2000, sudah mengetahui mengenai tempat di KM 28 di

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mana P23 telah ditemui. Perayu mendakwa bahawa pada 6 Januari 2000, dia dipaksa menandatangani P32 meskipun dia tidak tahu akan isi kandungannya kerana dia ketakutan akibat ancaman yang diterima pada 5 Januari 2000. SP13 memberi keterangan bahawa pada malam 25 Disember 1999, perayu telah bersemuka dengan Along tentang hubungan intim di antara Along dan isteri perayu ('SP6'). SP13 kemudiannya telah membawa perayu dan Along ke KM 28. Perayu dan Along telah keluar dari kereta dan perayu meminta SP13 pergi dan datang semula kira-kira 30–45 minit kemudian. Apabila SP13 kembali, dia melihat perayu berdiri seorang diri. Apabila SP13 bertanya kepada perayu tentang Along, perayu memberitahu untuk meninggalkannya sahaja. Peguam bagi perayu juga mendakwa bahawa kes pihak pendakwaan bergantung kepada keterangan ikut keadaan yang lemah. Peguam yang bijaksana berhujah bahawa terdapat keterangan yang tidak mencukupi untuk dengan kukuh membuktikan: (a) sebab dan/atau waktu kematian si mati; (b) niat untuk membunuh; (c) motif untuk pembunuhan yang didakwa; dan (d) kaitan penyebab di antara perayu dan kematian si mati. Dalam merayu terhadap keputusan hakim bicara, peguam yang bijaksana berhujah bahawa hakim yang bijaksana telah khilaf dengan membuat beberapa inferens yang salah dan tidak wajar yang tidak disokong oleh keterangan, termasuk yang berikut: (a) bahawa perayu telah menyerang Along sehingga menyebabkan dia tidak boleh berbuat apa-apa; (b) bahawa perayu telah membuat perancangan terlebih dahulu termasuklah mendapatkan karung guni untuk diisikan dengan mayat Along. Tidak terdapat saksi yang menyaksikan pembunuhan yang didakwa di dalam kes ini. Perayu juga berhujah satu lagi kemungkinan untuk menjelaskan kematian Along adalah bahawa dia telah diculik dan dibunuh oleh seseorang yang tidak dikenali dan yang masih lagi bebas.

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman mati:

(1) (oleh **Wan Adnan HMR**) Hakim bicara tidak khilaf bila menerima P32 kerana ia tidak memprejudiskan perayu malahan P32 bukan pengakuan oleh perayu. Perayu tidak mengakui membunuh si mati tetapi sekadar menyatakan dia telah mengisikan mayat si mati ke dalam karung guni dan mencampakkannya di tepi jalan. Kenyataan sedemikian boleh diterima di bawah s 27 Akta (lihat perenggan 45).

(2) (oleh **Wan Adnan HMR**) Hakim bicara telah mengarah pertimbangannya berdasarkan rangkaian keterangan ikut keadaan. Mahkamah boleh mensabitkan tertuduh atas pembuktian berdasarkan keterangan ikut keadaan. Hakim bicara telah memberi sebab-sebab secara terperinci dan menyeluruh dan berpandukan nas-nas kukuh dalam menerima pakai keterangan sedemikian (lihat perenggan 46).

(3) (oleh **Wan Adnan HMR**) Mengenai kemungkinan si mati diculik dan dibunuh oleh penculik, kenapa P23 ditemui di tempat kejadian (KM 28) di mana perayu dan si mati ada bersama buat kali terakhir. Adalah lebih

daripada kebetulan (*coincidence*) bahawa si mati diculik dan dibawa di dalam guni untuk dibuang di kawasan KM 28 iaitu tempat terakhir mereka berdua berada (lihat perenggan 51).

(4) (oleh **Wan Adnan HMR**) Hakim bicara tidak khilaf apabila menolak pembelaan perayu bahawa si mati balik sendiri. Tidak munasabah bahawa si mati mahu ditinggalkan di tepi hutan tebal yang sunyi di tengah malam, lebihan pula dalam bulan Ramadan. Keterangan SP13 sudah cukup untuk menolak cerita perayu (lihat perenggan 53).

(5) (oleh **Wan Adnan HMR**) Mengenai hujahan perayu bahawa kelewatan hakim bicara selama 5 tahun 5 bulan 23 hari dalam menulis alasan penghakiman, walaupun kelewatan tersebut adalah tidak munasabah, namun kelewatan tersebut tidak membawa ketidakadilan kepada perayu yang cukup untuk membolehkan mahkamah membebaskan perayu daripada pertuduhan. Hakim bicara tidak menyentuh mengenai perilaku saksi-saksi. Beliau hanya membuat penilaian berdasarkan fakta keterangan (lihat perenggan 59 & 64–65).

(6) (oleh **Ahmad Maarop HMR**) Mana-mana hakim yang munasabah yang berdepan dengan keterangan yang dikemukakan semasa perbicaraan dalam perbicaraan akan memutuskan, seperti yang diputuskan oleh hakim bicara di dalam kes ini, bahawa maklumat dalam P32 telah diberikan tanpa paksaan (lihat perenggan 76).

(7) (oleh **Ahmad Maarop HMR**) Setelah mempertimbangkan keterangan tersebut, tiada apa-apa yang dapat menunjukkan atau di mana inferens dapat dibuat bahawa polis mengetahui di mana P23 telah disembunyikan di KM 28 sebelum 6 Januari 2000. Tidak dapat disangsikan lagi bahawa P23 telah ditemui oleh polis berikutan maklumat yang diberikan oleh perayu kepada SP25 pada 6 Januari 2000, dan berikutan perayu membawa polis ke KM 28 di mana dia telah menunjuk ke arah sebuah lereng di mana, selepas pencarian, P23 telah ditemui (lihat perenggan 85 & 91).

(8) (oleh **Ahmad Maarop HMR**) Di bawah s 27 Akta, hanya sebilangan maklumat yang berkaitan secara khususnya dengan fakta yang ditemui dapat dibuktikan. Maklumat yang diberikan oleh perayu adalah tepat mengenai tempat di mana 'fakta' tersebut telah ditemui. Kemudian, perayu telah membawa polis ke KM 28, di mana dia telah menunjuk ke arah sebuah lereng, dan selepas pencarian, P23 telah ditemui. Justeru, kesemua maklumat di dalam P32 dengan jelas berhubungkait dengan penemuan P23. Hakim bicara yang bijaksana tidak khilaf apabila dia memutuskan maklumat di dalam P32 diterima sebagai keterangan di bawah s 27 Akta (lihat perenggan 92 & 95–96).

(9) (oleh **Ahmad Maarop HMR**) Hubungan di antara SP6 dan Along telah sampai ke tahap di mana ianya menyebabkan perayu membuat

keputusan untuk bertindak dan bersemuka dengan Along. Perayu didorong dengan rasa cemburu dan marah yang mana merupakan motif yang cukup kukuh. Untuk membuktikan kes pembunuhan, motif bukanlah elemen yang harus dibuktikan. Walau bagaimanapun, jika dapat ditunjukkan, ia dapat menyokong kes terhadap tertuduh. Motif tersebut telah dibuktikan dalam rayuan ini (lihat perenggan 158).

(10)(oleh **Ahmad Maarop HMR**) Keseluruhan keterangan ikut keadaan dalam kes ini (meskipun tanpa keterangan maklumat di dalam P32) menjurus kepada satu kesimpulan sahaja — bahawa perayu telah menyebabkan kematian Along (lihat perenggan 164).

(11)(oleh **Ahmad Maarop HMR**) Hakim bicara yang bijaksana dengan betul telah mempertimbangkan keterangan daripada SP12 dan keterangan tentang penemuan mengerikan mayat Along yang tidak berpakaian di dalam P23, dengan kain di keliling tulang leher dan lutut kanan dan kiri diikat dengan satu lagi helaian kain, dan membuat kesimpulan bahawa niat untuk membunuh di bawah s 300(a) Kanun telah dibuktikan. Hakim bicara yang bijaksana adalah betul dalam memutuskan bahawa pihak pendakwaan telah membuktikan kes pembunuhan prima facie terhadap perayu (lihat perenggan 166 & 169).

[English summary

The accused ('appellant') was charged and convicted with the murder of one Along, an offence punishable under s 302 of the Penal Code ('Code'). The murder was said to have taken place on 26 December 1999 at about 1am at the road side at KM 28 Jalan Kuala Kelawang-Genting Peras, in Negeri Sembilan ('KM 28'). On 5 January 2000 the appellant was arrested. On 6 January 2000 he was questioned by DSP Nor Azizan ('SP25'). In the course of the questioning, the appellant gave SP25 certain information which was reduced into writing by SP25 in P32. After a trial within a trial, the trial judge held the information in P32 to be admissible in evidence under s 27 of the Evidence Act 1950 ('Act'). In short the appellant stated that he had bundled Along's corpse into a gunny sack and had thrown it by the side of the road at KM 28 and the appellant had agreed to show the place. The appellant then led SP25 and the police party to KM 28, where the appellant pointed to a slope. After a brief search, a gunny sack ('P23') which was tied at its end was found in the bushes. P23 was found to contain Along's corpse. Learned counsel's for the appellant submitted that the police had known before 6 January 2000, about the place at KM 28 where P23 was found. The appellant claimed that on 6 January 2000 he was forced to sign on P32 although he did not know its contents because he was in fear following the threat he received on 5 January 2000. SP13 testified that on the night of 25 December 1999 the appellant had confronted Along about the alleged intimate relationship between Along and the appellant's wife ('SP6'). SP13 had then driven the appellant and Along to KM 28. The appellant and Along had alighted from the car and the appellant asked SP13 to

leave and return in about 30–45 minutes. When SP13 returned, he saw the appellant standing alone. When SP13 asked the appellant about Along, the appellant told to leave him. Counsel for the appellant also claimed that the prosecution's case rested on a very weak circumstantial evidence. Learned counsel submitted that there was insufficient evidence to conclusively prove: (a) the cause and/or time of the death of the deceased; (b) the intention to kill; (c) the motive for the alleged murder; and (d) the causal link between the appellant and the death of the deceased. In appealing against the trial judge's decision, learned counsel contended that the learned judge erred in making various erroneous and improper inferences which were not supported by evidence, which included the following: (a) that the appellant had assaulted Along to the point that the latter was rendered helpless to do anything; (b) that the appellant had made prearranged plan including getting a gunny sack to put in Along's body. There was no eyewitness to the alleged murder in this case. The appellant also contended the other possible explanation to account for the death of Along was that he was kidnapped and murdered by a person or persons unknown and who were still at large.

Held, dismissing the appeal and affirming the conviction and the death sentence:

(1) (per **Wan Adnan JCA**) The trial judge had not erred when admitting P32 as it did not prejudice the appellant and in fact P32 was not an admission by the appellant. The appellant did not admit to killing the deceased but merely stated that he had put the deceased's body inside the gunny sack and thrown it by the roadside. Such statement is admissible under s 27 of the Act (see para 45).

(2) (per **Wan Adnan JCA**) The trial judge had directed his consideration based on the series of circumstantial evidence. The court can convict the accused based on the proof of the circumstantial evidence. The trial judge had given detailed and extensive reasons and had accorded a complete and detailed authorities in applying such evidence (see para 46).

(3) (per **Wan Adnan JCA**) With regard to the possibility of the deceased being kidnapped and murdered by the kidnapper, why would P23 be found at the scene of the crime (KM 28) where the appellant and the deceased were last together. It would be more than a coincidence for the deceased to be kidnapped and placed inside the gunny sack to be thrown at KM 28 area which was the last place they were together (see para 51).

(4) (per **Wan Adnan JCA**) The trial judge had not erred when he rejected the appellant's defence that the deceased had gone back home on his own. It would be absurd that the deceased would want to be left alone at the side of a deep quiet forest in the middle of the night, furthermore in the month of Ramadhan. SP13's evidence was sufficient to reject the appellant's story (see para 53).

(5) (per **Wan Adnan JCA**) With regard to the appellant's contention that there was a delay for 5 years 5 months and 23 days by the trial judge in writing the grounds of judgment, although such delay was unreasonable, however the delay had not caused injustice to the appellant to the extent that it would permit the court to acquit the appellant of the charge. The trial judge did not touch on the demeanour of the witnesses. He had only made his evaluation based on the facts of the evidence (see paras 59 & 64–65).

(6) (per **Ahmad Maarop JCA**) Any reasonable judge faced with the evidence produced during the trial within a trial would have held, as the learned trial judge in the present case held, that the information in P32 was given voluntarily (see para 76).

(7) (per **Ahmad Maarop JCA**) Upon considering the evidence, there was nothing to show or from which inference could be made that the police had already known about where P23 was hidden at KM 28 before 6 January 2000. There was no doubt that P23 was discovered by the police pursuant to the information given by the appellant to SP25 on 6 January 2000, and pursuant to the appellant leading the police to KM 28 where he pointed to a slope from where, after a search, P23 was found (see paras 85 & 91).

(8) (per **Ahmad Maarop JCA**) Under s 27 of the Act, only so much of the information as relates distinctly to the fact thereby discovered may be proved. The information given by the appellant was precise as to the place where the 'fact' was discovered. Then the appellant led the police to KM 28, where he pointed to a slope, and after a search, P23 was found. Thus, the whole of the information in P32 distinctly related to the discovery of P23. The learned trial judge did not err when he held the information in P32 to be admissible in evidence under s 27 of the Act (see paras 92 & 95–96).

(9) (per **Ahmad Maarop JCA**) The relationship between SP6 and Along had reached a point where it prompted the appellant to decide to act and confront Along. The appellant was spurred by jealousy and anger which was a strong enough motive. To establish a case of murder, motive is not an element which must be proven. However, it would if shown tend to support the case against the accused. Such a motive was established in the instant appeal (see para 158).

(10) (per **Ahmad Maarop JCA**) The totality of the circumstantial evidence in this case (even without the evidence of the information in P32) led to one conclusion only — that the appellant had caused the death of Along (see para 164).

(11) (per **Ahmad Maarop JCA**) The learned trial judge had correctly considered the evidence of SP12 and the evidence of the gruesome

discovery of the naked body of Along in P23 with cloth around the bone of the neck and with the right and left ankle tied with another piece of cloth, and concluded that the intention to kill under s 300(a) of the Code had been proven. The learned trial judge was right in holding that the prosecution had proven a prima facie case of murder against the appellant (see paras 166 & 169).]

Nota-nota

Untuk kes-kes mengenai kenyataan tertuduh kepada polis, lihat 7(1) *Mallal's Digest* (4th Ed, 2010 Reissue) perenggan 2416–2676.

Untuk kes-kes mengenai s 302 Kanun Keseksaan, lihat 4 *Mallal's Digest* (4th Ed, 2005 Reissue) perenggan 1520–1579.

Kes-kes yang dirujuk

Ahmad Najib bin Aris v PP [2007] 2 MLJ 505, MR (dirujuk)

Amathevelli a/p R Ramasamy v PP [2008] 3 MLJ 782; [2008] 4 CLJ 413, MR (dirujuk)

Chan Chwen Kong v PP [1962] MLJ 307, MR (dirujuk)

Chong Soon Koy v PP [1977] 2 MLJ 78, MP (dirujuk)

Dato Mokhtar bin Hashim & Anor v PP [1983] 2 MLJ 232, MP (dirujuk)

Francis Antonysamy v PP [2005] 3 MLJ 389; [2005] 2 CLJ 481, MP (diikut)

Jayaraman & Ors v PP [1982] 2 MLJ 306 (dirujuk)

Karam Singh v PP [1967] 2 MLJ 25, MP (dirujuk)

Liew Kaling & Ors v PP [1960] MLJ 306, MR (dirujuk)

Miller v Minister of Pensions [1947] 2 All ER 372, KBD (dirujuk)

Muniandy & Anor v PP [1973] 1 MLJ 179, MP (dirujuk)

Parimal v State [1986] Cr LJ 220 (dirujuk)

PP v Liew Sam Seong [1982] 1 MLJ 223 (dibeza)

PP v Hanif Basree bin Abdul Rahman [2008] 3 MLJ 161; [2008] 4 CLJ 1, MP (dirujuk)

PP v Mohd Bandar Shah bin Nordin & Anor [2008] 4 MLJ 556; [2008] 4 CLJ 859, MR (dirujuk)

Pulukuri Kottaya v Emperor AIR 1947 PC 87, PC (diikut)

Punja Mava v State of Gujarat AIR 1965 Guj 5 (diikut)

R v Hodge (1838) 2 Lew CC 227 (dirujuk)

Ram Lochan Ahir v State of West Bengal AIR 1963 SC 1074, MA (diikut)

Sia Soon Suan v PP [1966] 1 MLJ 116, MP (dirujuk)

Su Ah Ping v PP [1980] 1 MLJ 75, MP (dirujuk)

Sunny Ang v PP [1966] 2 MLJ 195, MP (dirujuk)

Syed Ali bin Syed Abdul Hamid & Anor v PP [1982] 1 MLJ 132, MP (dirujuk)

Tan Hun Wah v PP and another appeal [1994] 1 MLJ 382; [1994] 1 AMR 113, MA (diikut)

Wai Chan Leong v PP [1989] 3 MLJ 356, MA (dirujuk)

Yeong Kia Heng lwn Pendakwa Raya [1992] 1 MLJ 327, MA (dirujuk)

Undang-undang yang dirujuk

Akta Keterangan 1950 s 27
Kanun Keseksaan s 300, 300(a)
Kanun Prosedur Jenayah s 113

Rayuan daripada: Perbicaraan Jenayah No 45–4 Tahun 2000 (Mahkamah Tinggi, Seremban)

Markhan Singh (Markhan Singh & Associates) bagi pihak perayu.
Awang Armadajaya bin Awang Mahmud (Timbalan Pendakwa Raya, Jabatan Peguam Negara) bagi pihak responden.

Wan Adnan Muhamad HMR (menyampaikan penghakiman mahkamah):

[1] Perayu (tertuduh di Mahkamah Tinggi) telah dituduh seperti berikut:

> Bahawa kamu pada 26 Disember 1999, lebih kurang jam 1.00 pagi di tepi jalan dikawasan KM 28 Jalan Kuala Kelawang-Genting Peras, di dalam Daerah Jelebu di dalam Negeri Sembilan telah melakukan pembunuhan dengan menyebabkan kematian SABI'UL MALIK BIN SHAFIEE KP: 800422-14-5521 dan dengan ini melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

[2] Setelah bicara Mahkamah Tinggi Seremban yang membicarakan ('mahkamah bicara') kes ini telah mendapati perayu bersalah dan disabitkan kesalahannya. Hukuman gantung sampai mati telah dijatuhkan ke atas perayu. Perayu tidak puas hati atas keputusan mahkamah bicara dan mengemukakan rayuan ke mahkamah ini atas keseluruhan keputusan mahkamah bicara tersebut.

[3] Oleh kerana kes ini bergantung atas keterangan ikut keadaan (*circumstantial evidence*) dan peruntukan s 27 Akta Keterangan 1950 ('AK') saya akan cuba memaparkan latar belakang kes sepadat dan selengkap mungkin untuk memberi gambaran jelas. Dalam pembentangan fakta nanti, saya bersilih ganti penamaan perayu dan tertuduh. Begitu juga si mati dan Along. Untuk menghindarkan kekeliruan perayu dan tertuduh adalah orang yang sama. Manakala si mati dan Along juga orang yang sama.

[4] Pada 25 Disember 1999 jam lebih kurang 8.30 malam dalam bulan puasa tertuduh telah menelefon L/Kpl Mohd Fadzli ('SP13') supaya berjumpa dengannya di Jalan 3/9 Pandan Jaya. Di tempat tersebut tertuduh dan SP13 makan bersama. Selepas makan tertuduh minta SP13 memandu kereta Proton Saga warna coklat gelap No BCX 5744 kepunyaan SP13 ke Jalan 3/10. Setiba di jalan tersebut tertuduh tunjuk kepada SP13 sebuah kereta berwarna merah

yang berada di tempat letak kereta lebih kurang 50 meter dari mereka yang berada di dalam kereta BCX 5744. Tertuduh memberitahu SP13 yang kereta merah tersebut kepunyaan penyanyi kumpulan Spoon bernama Along. Tertuduh juga memberitahu SP13 yang beliau mensyaki isterinya ('SP6') keluar dengan Along. Tertuduh dan SP13 berada dalam kereta BCX 5744 membuat pemerhatian selama kira-kira 20 minit. Ketika itulah tertuduh meluahkan masalah rumahtangga dengan isterinya. Tertuduh menyatakan isterinya tinggal di rumah ibunya ('ibu SP6') dan selalu keluar rumah dan balik lewat.

[5] Isteri tertuduh (SP6) bekerja dengan Syarikat Life Records sebagai pempromosi artis-artis baru termasuk Along. Mengikut SP13 beliau pernah mengintip SP6 dan Along di Hotel Vistana atas permintaan tertuduh. SP13 telah nampak SP6 bersama Along di situ dan melaporkan kepada tertuduh.

[6] Pada jam kira-kira 10.15 malam yang sama Sariul Raini bt Shafiee ('SP10') iaitu adik perempuan si mati (Along) keluar dari rumahnya di Kg Sungai Kerayong, Cheras menaiki motosikal bersama Mohd Haideer ('SP11') sepupunya ke Pekan Pandan Jaya untuk beli minuman. Ketika hendak pulang ke rumah SP10 ternampak abangnya Along (si mati) berada di Jalan 3/10 dalam kereta WFT 2755 (kereta si mati) yang sedang menggunakan telefon bimbit. Kemudian si mati memanggil SP10 dan menyerahkan sebuah beg plastik berisi surat-surat dan kad-kad Hari Raya untuk dibawa pulang ke rumah mereka.

[7] Sebelum itu SP10 dan SP11 juga ternampak perayu berada dalam kereta Proton Saga warna coklat muda ketika kereta tersebut hendak 'parking' di Jalan 3/10 lebih kurang 50 meter jarak di mana SP10 dan Along berada di sebelah pondok telefon awam. SP10 dan SP11 mengenali perayu sebelum itu (25 Disember 1999).

[8] Ketika SP13 dan tertuduh sedang menunggu, muncul kereta Proton Wira biru melintasi kereta SP13. Tertuduh memberitahu kereta Proton Wira biru tersebut ialah kepunyaan SP6. Kereta SP6 menuju ke arah tempat kereta Along dan kereta SP6 berhenti di belakang kereta Along. Tempatnya terang. Tertuduh memberitahu SP13 Along turun dari kereta isterinya dan menaiki keretanya (Along) lalu beredar. Tertuduh minta SP13 mengekori kereta Along. Di Jalan 3/9 tertuduh minta SP13 berhenti dan tertuduh turun, kemudian kembali semula ke kereta SP13 dengan membawa Along bersama. Perayu dan Along duduk di belakang kereta. SP13 cam Along kerana pernah lihat gambar di dalam majalah.

[9] Di dalam kereta, SP13 dengar tertuduh menyoal Along beberapa kali dengan siapa dia (Along) keluar dan ke mana. Tetapi Along tidak jawab. Ketika

itu SP13 pandu keretanya ke jalan besar mengarah ke Istana Selangor dan apabila SP13 melihat minyak keretanya dekat kehabisan, ketika itu jam lebih kurang 10.35 malam, tertuduh mahu dia dan Along diturunkan di tempat tunggu bas Wisma Tani sementara SP13 pergi mengisi minyak kira-kira 5km jarak dari situ (ialah di Jalan Pekeliling).

[10] Selepas minyak diisi SP13 mengambil semula tertuduh dan Along dari tempat menunggu bas tersebut dan terus memandu keretanya hingga ke Batu 9 Cheras. Apabila sampai ke suatu simpang tertuduh minta SP13 belok ke kiri hingga ke suatu simpang tiga di mana SP13 diminta oleh tertuduh menuju ke arah Kuala Kelawang. Kereta SP13 terus menghala ke arah Kuala Kelawang sehingga SP13 ternampak batu bertanda KM 28. SP13 terus memandu lebih kurang 2km dari batu bertanda KM 28 tersebut di mana tertuduh menyuruh SP13 berhenti. Tertuduh dan si mati turun sementara SP13 tunggu di dalam keretanya. Kemudian tertuduh dan si mati masuk balik ke dalam kereta. Tertuduh minta SP13 patah balik ke arah Kuala Lumpur.

[11] Sepanjang perjalanan dari tempat menunggu bas dekat Wisma Tani sehinggalah sampai di tiang bertanda KM 28 tertuduh sering bertanya Along mengenai isterinya Salina Ali (SP6) dan hubungannya dengan SP6. Apabila Along menyatakan bahawa dia (Along) setakat mencium Salina sahaja SP13 terdengar seperti orang ditampar di bahagian kepala beberapa kali. SP13 juga terdengar suara Along meminta maaf.

[12] Selepas melepasi tiang KM 28 tertuduh meminta beliau menurunkan dia dan juga Along. Tertuduh minta SP13 beredar dari tempat tersebut. Tertuduh dan Along ditinggalkan di situ selama 30–45 minit atas arahan tertuduh. Tertuduh dan Along turun dari kereta SP13 kira-kira jam 12.50 pagi, 26 Disember 1999.

[13] Setelah Along dan tertuduh turun dari kereta, SP13 berpatah balik menghala ke Kuala Lumpur mengikut Jalan Hulu Langat/Kuala Lumpur. Apabila SP13 sampai di simpang tiga yang ada tulisan Kuala Kelawang, SP13 pun berpatah balik ke tempat kedua-dua tertuduh dan Along diturunkan. Mengikut SP13 tempat tersebut sunyi dan gelap berhutan tebal. Tiada kelihatan orang lalu lintas melainkan cuma sesekali ada kenderaan melintas.

[14] Lebih kurang jam 1.30 pagi SP13 sampai di tempat Along dan tertuduh ditinggalkan dan SP13 melihat hanya tertuduh berdiri seorang diri. Tertuduh terus masuk kereta. SP13 bertanya tertuduh di mana Along, tetapi tertuduh berkata 'kita balik biarkanlah dia'. Selepas SP13 bertanya beberapa kali tertuduh mendiamkan diri dan termenung. SP13 pandu sehingga tiba di Jalan Pandan 3 pada jam 2.15 pagi.

[15] Di dalam keterangannya SP13 juga menyatakan bahawa pada malam 25 Disember 1999 hingga 26 Disember 1999 tertuduh memakai jaket kulit warna gelap dan Along juga berpakaian baju T warna gelap dan seluar jeans warna gelap.

[16] Kehilangan Along telah dilaporkan di dalam akhbar. Apabila SP13 bertanya tertuduh jawapannya ialah apa-apa hal biar dia bertanggungjawab.

[17] Along tidak pulang ke rumah pada 26 Disember 1999 dan tiada berita mengenainya hinggalah apabila mayatnya dijumpai dalam guni ('P23') oleh polis, pada jam 10.20 pagi hasil maklumat daripada tertuduh sebelum itu pada hari yang sama.

[18] Semasa kehilangan Along tertuduh dan SP6 dipanggil oleh ibu bapa Along ('SP7' dan 'SP8'). Tertuduh menafikan dia pernah berjumpa Along pada malam hari 25 Disember 1999 apabila ditanya ekoran apa yang diceritakan oleh SP10. SP7 turut meminta tertuduh mencari si mati memandangkan tertuduh merupakan seorang anggota polis.

[19] Di samping itu ada panggilan-panggilan telefon untuk wang tebusan sebanyak RM500,000 atas penculikan Along.

[20] Tertuduh telah ditangkap pada 5 Januari 2000. Hasil proses pengambilan percakapan beramaran di bawah s 113 tertuduh telah memberi maklumat 'Mayat Along yang saya isikan dalam guni telah saya campakkan di tepi jalan ke Kuala Kelawang dan saya setuju untuk menunjukkan tempat itu'.

[21] Tertuduh membawa polis ke tempat mayat Along dibuang. Guni berisi mayat (P23) telah dijumpai pada pagi 6 Januari 2000 KM 28 Jalan Kuala Kelawang-Genting Peras hasil maklumat yang diberi oleh tertuduh. Kemudian P23 dibawa ke hospital (HUKM) dengan Land Rover polis yang diiringi oleh SP21. Manakala SP12 mengekori Land Rover tersebut dari belakang dengan kereta polis.

[22] Di HUKM SP12 membuat pemeriksaan. Bila P23 dibuka SP12 mendapati mayat yang telah reput berkedudukan seperti janin dalam rahim (secara terperinci sila lihat keterangan SP12). Hasil pemeriksaan dan bedah siasat SP12 (pakar forensik) telah membuat kesimpulan kematian mayat dalam P23 ialah kematian akibat jerutan pada leher.

[23] Adunan keterangan saksi-saksi pendakwaan seperti SP12, SP17 dan lain-lain menghasilkan tindihan gambar (*superimposition*), (eksh P20A–P20C) daripada tengkorak dalam P23.

[24] Daripada gambar P20A dan P20B, keterangan SP6, SP10, SP11 dan SP13 menunjukkan P20A dan P20B sebagai gambar si mati.

[25] Identiti si mati sebagai Along telah dibuktikan melalui proses profailan DNA oleh SP5 (ahli kimia). Hasilnya didapati pembuktian identiti si mati disandarkan oleh pendakwaan. SP5 telah membuat pemprofailan DNA daripada contoh-contoh darah ibu bapa si mati (SP7 dan SP8) yang telah dibanding dengan cebisan tulang si mati (P9) dan tisu si mati (P10A). Daripada proses tersebut SP5 mendapati si mati adalah anak kandung SP7 dan SP8 atas ketepatan tidak kurang 99% kebarangkalian padanan.

[26] Tidak lengkap sekiranya saya tidak paparkan keterangan ikut keadaan yang pihak pendakwaan bergantung untuk membuktikan kes prima facie. Antaranya yang ketara ialah seperti berikut:

(a) Keterangan SP13 tidak dicabar yang menunjukkan tertuduh dan Along ada bersama-sama di KM 28 pada 25 Disember 1999.

(b) SP13 mendapati hanya tertuduh sahaja berada di KM 28 selepas kira-kira 45 minit kemudian.

(c) Bila SP13 menanya tentang ketiadaan Along di KM 28, tertuduh hanya berkata biarkanlah dia dan tertuduh berdiam diri bila SP13 berulang-ulang bertanya kerana di situ tempat sunyi dan gelap di tepi hutan tebal serta tiada orang lalu lintas. Lagipun sudah jam 1.30 pagi dalam bulan puasa.

(d) Apabila kehilangan si mati disiarkan dalam akhbar SP13 ada bertanya tertuduh mengenai kehilangan Along dan tertuduh berkata 'apa-apa hal saya bertanggungjawab'.

(e) Tertuduh cemburu tentang perhubungan isterinya (SP6) dengan Along membuatnya menyuruh SP13 mengintip SP6 dan Along di Hotel Vistana.

(f) Tertuduh ada memberitahu SP13 isterinya keluar dengan Along dan lewat balik ke rumah.

(g) Ketika berada dalam kereta SP13 dalam perjalanan ke KM 28 tertuduh bertanya Along mengenai hubungannya (Along) dengan SP6 dan Along kata dia pernah mencium SP6.

(h) Tertuduh sangat marah dengan si mati. Ini dibuktikan dengan dia memukul dan menampar si mati.

(i) Identiti si mati dibukti melalui proses DNA.

(j) Kematian si mati disebabkan jerutan kain denim biru yang kebetulan si mati juga memakai seluar denim warna biru pada 25 Disember 1999.

(k) Guni (P23) juga diikat dengan kain denim biru.

(l) Umur Along juga dibuktikan melalui proses *dental restoractive*.

(m) Keterangan SP7, SP8 dan lain-lain mengenai kehilangan Along.

(n) Keterangan SP7 yang menyatakan tertuduh menafikan ada berjumpa si mati di Jalan 3/10 Pandan Jaya.

(o) SP10 dan SP11 ada melihat tertuduh berada dalam kereta tidak jauh dari Along yang berada di dalam keretanya di Jalan 3/10 Pandan Jaya.

(p) Tertuduh mengarah SP13 pergi ke KM 28 kerana hendak bertanya hubungan si mati dengan SP6.

(q) Tertuduh mengarah SP13 mengekori kereta si mati. Kemudian memaksa si mati masuk dalam kereta SP13.

(r) Tertuduh meminta SP13 datang ke Pandan Jaya kerana hendak mengintip SP6 dan Along.

(s) Tarikh kematian si mati melalui proses forensik yang menyatakan si mati telah meninggal dunia seminggu atau dua minggu sebelum 26 Disember 1999.

[27] Dalam penghujahan bertulisnya TPR menyarankan bahawa rayuan perayu disasarkan atas beberapa persoalan seperti berikut:

(a) Sama ada perayu boleh disabitkan atas pembuktian melalui keterangan-keterangan ikut keadaan.

(b) Sama ada hakim bicara khilaf dari segi prinsip undang-undang apabila menerima fakta maklumat yang diberi oleh perayu di bawah peruntukan s 27 AK.

(c) Sama ada terdapat putus pertalian (*gap*) rangkaian keterangan yang boleh memusnahkan kes pendakwaan.

(d) Sama ada terdapat keraguan dan kecelaruan dalam keterangan ahli kimia untuk analisa DNA.

(e) Sama ada hakim bicara gagal memberi pertimbangan wajar terhadap keterangan pihak perayu.

(f) Sama ada timbul kemungkinan wujudnya berbagai andaian dalam keterangan pihak pendakwaan.

[28] Pada pandangan saya daripada fakta kes ini jelas pihak pendakwaan amat bergantung kepada keterangan ikut keadaan (*circumstantial evidence*) kerana ketiadaan keterangan secara langsung (*direct evidence*).

[29] Adalah suatu prinsip undang-undang mantap (*trite*) mahkamah bicara seharusnya berhati-hati dalam menerima pakai keterangan sedemikian melainkan mahkamah bicara berpuashati bahawa terdapat banyak agregat keterangan ikut keadaan yang membolehkan hakim bicara berpuashati dengan kekukuhan keterangan tersebut yang hanya menudingi (*pointing*) terhadap penglibatan tertuduh dalam melakukan kesalahan dan tidak sebaliknya.

[30] Izinkan saya memetik beberapa kes tersohor mengenai penerimaan pakai keterangan ikut keadaan misalnya seperti *Jayaraman & Ors v Public Prosecutor* [1982] 2 MLJ 306; *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232 sering menjadi panduan apabila mahkamah berdepan dengan pembuktian oleh pendakwaan melalui keterangan ikut keadaan.

[31] Sebagai panduan Suffian KHN dalam kes *Jayaraman & Ors v Public Prosecutor* telah memetik beberapa sedutan nas-nas termasuk pendapat Thomson CJ dalam kes *Chan Chwen Kong v Public Prosecutor* [1962] MLJ 307 seperti berikut (dalam bahasa asal):

> That evidence was entirely circumstantial and what the criticism of its amounts to is this, that no single piece of that evidence is strong enough to sustain conviction. That is very true. It must however be borne in mind that in cases like this, where the evidence is wholly circumstantial what has to be considered is not only of each individual strand of evidence but also the combined strength of these strands when twisted together to form a rope. The real question is; is that rope strong enough to hang the prisoner?

[32] Suffian KHN juga merujuk kepada beberapa kes seperti *Karam Singh v Public Prosecutor* [1967] 2 MLJ 25; *Sunny Ang v Public Prosecutor* [1966] 2 MLJ 195; *Muniandy & Anor v Public Prosecutor* [1973] 1 MLJ 179; *R v Hodge* (1838) 2 Lew CC 227. Petikan kata-kata tersebut oleh Thomson CJ juga dirujuk dalam kes mahkamah ini iaitu *Public Prosecutor v Mohd Bandar Shah bin Nordin & Anor* [2008] 4 MLJ 556; [2008] 4 CLJ 859.

[33] Sehubungan dengan itu Suffian KHN merumuskan di ms 309 dalam kes *Jayaraman* seperti berikut (dalam bahasa asal):

> ..., and there is no rule that, where the prosecution is based on circumstantial evidence, the judge must, as a matter of law, give further direction that the facts proved are not only consistent with the guilt of the accused, but also as to be inconsistent with any other reasonable conclusion.

[34] Dan di ms 310 beliau memaparkan kedudukan (*proposition*) prinsip undang-undang berkenaan keterangan ikut keadaan seperti ini:

In our view the irresistible conclusion test only seems to place on the prosecution a higher burden of proof that in a case where it depends on direct evidence, for in fact to apply the one and one only irresistible conclusion test is another way of saying that the prosecution must prove the guilt of the beyond reasonable doubt.

[35] Dalam kes *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* di ms 275 Abdoolcader HMP memetik kata-kata Suffian KHN yang saya katakan di atas tetapi menyarankan seperti berikut (dalam bahasa asal):

..., but in a case tried without a jury the failure by the court to expressly state this is not fatal and it would suffice if it merely says that it is satisfied as to the guilt of the accused beyond reasonable doubt (*Jayaraman & Ors v Public Prosecutor*).

[36] Seperkara lagi ialah pihak pendakwaan bergantung kepada kenyataan perayu selepas ditahan. Kenyataan yang dibuat di bawah peruntukan s 113 Kanun Prosedur Jenayah ('KPJ') iaitu 'Mayat Along yang saya isikan dalam guni telah saya campakkan di tepi jalan ke Kuala Kelawang dan saya setuju untuk tunjukkan tempat itu'. Hasil daripada maklumat tersebut guni berisi mayat si mati (Along) telah ditemui di KM 28 Jalan Kuala Kelawang.

[37] Sehubungan dengan itu pihak pendakwaan bergantung kepada peruntukan s 27 Akta Keterangan 1950 ('AK') yang berbunyi seperti berikut:

When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of that information, whether the information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.

[38] Pemakaian prinsip undang-undang untuk menerima pakai fakta sebagai keterangan bagi membuktikan kes terhadap tertuduh di bawah peruntukan s 27 AK telah mantap. Sila lihat kes *Wai Chan Leong v Public Prosecutor* [1989] 3 MLJ 356; *Pulukuri Kottaya v Emperor* AIR 1947 PC 87; *Chong Soon Koy v Public Prosecutor* [1977] 2 MLJ 78; *Francis Antonysamy v Public Prosecutor* [2005] 3 MLJ 389; [2005] 2 CLJ 481.

[39] Peguam perayu telah mengemukakan hujah bertulisnya yang panjang lebar serta dengan hujah lisan secara terperinci. Pada hemat saya intipati persoalan-persoalan yang dihujah bolehlah dirumuskan antaranya secara ringkas seperti berikut:

(a) Kelewatan dalam penyediaan alasan penghakiman selama 5 tahun 5 bulan 23 hari oleh hakim bicara memprejudiskan perayu: *Tan Hun Wah v Public Prosecutor and another appeal* [1994] 1 MLJ 382; [1994] 1 AMR 113; atas persoalan ini saya akan menyentuhnya di akhir alasan saya nanti.

(b) Pihak pendakwaan gagal membuktikan kes prima facie terhadap perayu oleh kerana kegagalan pengecaman mayat secara positif, ada ruang (*gap*) dalam proses pelabelan dan pengambilan ekshibit-ekshibit seperti sampel darah, ekshibit untuk DNA tidak disimpan rapi: *Yeong Kia Heng lwn Pendakwa Raya* [1992] 1 MLJ 327; *Sia Soon Suan v Public Prosecutor* [1966] 1 MLJ 116.

(c) Pihak pendakwaan gagal membuktikan sebab kematian dan waktu kematian, senjata pembunuhan dan barang peribadi si mati tidak dijumpai.

(d) Niat perayu untuk membunuh si mati tidak dibuktikan.

(e) Hakim bicara gagal memberi pertimbangan wajar atas keterangan ikut keadaan.

(f) P32 tidak boleh diterima masuk sebagai keterangan.

(g) Polis telah tahu wujudnya P23 di KM 28.

(h) Kegagalan memanggil saksi-saksi.

(i) Tuntutan wang tebusan membuktikan si mati telah diculik.

[40] Seperkara lagi mengikut peguam perayu, pihak pendakwaan gagal mengemukakan keseluruhan kenyataan tertuduh sebanyak enam muka surat ketika proses rekod kenyataan s 113 yang sepatutnya menjadi sebahagian P32. Dengan gagal berbuat demikian ada timbul ketidakadilan (*miscarriage of justice*) kepada perayu.

[41] Di samping itu peguam perayu juga membangkitkan kenyataan dalam P32 iaitu 'mayat Along yang saya isikan dalam guni telah saya campakkan di tepi jalan ke Kuala Kelawang' tidak boleh diterima kerana ia berbau pengakuan bukan fakta maklumat. Ia dikatakan lebih memprejudiskan perayu daripada nilai pembuktian (*probative value*).

[42] Pada pendapat saya tiada kekhilafan oleh hakim bicara bila menerima masuk keterangan fakta maklumat di bawah peruntukan s 27 AK. Walaupun maklumat tersebut diperolehi semasa proses merekodkan kenyataan di bawah peruntukan s 113 KPJ tetapi ia boleh diterima berdasarkan nas-nas diterima pakai meskipun ia tidak mengikut prosedur seperti dalam kes ini. Hakim bicara telah menolak kenyataan di bawah s 113 KPJ tetapi menerima P32 sebagai fakta yang akan dibuktikan. Dalam penghujahan peguam perayu menggesa mahkamah ini untuk menolak fakta maklumat dalam P32 kerana ia bukan lagi relevan kepada penemuan P23 memandangkan pihak polis boleh diandaikan telah mengetahui mengenai kewujudan P23 di KM 28 berdasarkan

SP13 telah disoal siasat pada 5 Januari 2000 iaitu sehari sebelum P23 ditemui di KM 28 pada 6 Januari 2000 (*Public Prosecutor v Liew Sam Seong* [1982] 1 MLJ 223).

[43] Dakwaan peguam perayu peruntukan s 27 AK tidak terpakai kerana polis telah mengetahui dengan kemunculan *photographer* adalah tidak bermerit. Hakim bicara telah menerima keterangan SP13 iaitu saksi penting pendakwaan. Beliau mendapati keterangan SP13 tidak dicabar melalui soal balas sama ada SP13 memberitahu mengenai kewujudan P23 di KM 28. Lagipun pihak perayu gagal menggugatkan keterangan SP25 dan SP27 untuk membuktikan polis mengetahui kewujudan P23 sebelum perayu memberi maklumat (P32).

[44] Sehubungan dengan itu pihak tertuduh juga gagal mencabar SP13, SP25, SP27 untuk menunjukkan motif mereka yang memberi keterangan terhadap perayu. Adalah prinsip mantap tanpa pembuktian motif tertentu oleh saksi-saksi pendakwaan maka mahkamah tidak seharusnya meragui kewibawaan keterangan saksi-saksi tersebut.

[45] Hakim bicara tidak khilaf bila menerima P32 kerana ia tidak memprejudiskan perayu malahan P32 bukan pengakuan oleh perayu. Perayu tidak mengakui membunuh si mati tetapi sekadar menyatakan beliau mengisikan mayat si mati dalam guni dan mencampakkan di tepi jalan. Kenyataan sedemikian boleh diterima di bawah s 27 AK (sila lihat kes *Amathevelli a/p R Ramasamy v Public Prosecutor* [2008] 3 MLJ 782; [2008] 4 CLJ 413; *Francis Antonysamy v Public Prosecutor*).

[46] Pada pandangan saya hakim bicara telah mengarahkan pertimbangannya berdasarkan rangkaian keterangan-keterangan ikut keadaan. Adalah nas yang menyatakan bahawa mahkamah boleh mensabitkan tertuduh atas pembuktian berdasarkan keterangan-keterangan ikut keadaan. Dalam kes *Sunny Ang* perayu telah disabitkan kesalahan atas keterangan ikut keadaan walaupun mayat si mati tidak dijumpai. Di dalam kes rayuan ini mayat telah dijumpai dan terdapat banyak keterangan-keterangan ikut keadaan yang menuding kepada kesalahan perayu termasuk motif tertuduh untuk membunuh si mati. Hakim bicara telah memberi sebab-sebab secara terperinci dan menyeluruh dan berpandukan nas-nas kukuh dalam menerima pakai keterangan sedemikian.

[47] Dalam penghakimannya hakim bicara mengarah mindanya bahawa pihak pendakwaan perlu membuktikan terhadap perayu iaitu:

(a) Along telah mati;

(b) Dia mati akibat kecederaannya;

(c) Kematian adalah akibat pukulan oleh tertuduh dan; A

(d) Tertuduh berniat membunuh Along.

[48] Sebelum memanggil tertuduh untuk membela diri atas kejayaan pihak pendakwaan menegakkan kes prima facie hakim bicara berkata: B

Bahawa Along telah mati adalah jelas daripada keterangan SP12. Kematiannya itu adalah akibat kecederaan yang dialaminya juga jelas daripada keterangan SP12.

Bahawa OYDT yang menyebabkan kematian Along adalah inferens yang dapat disimpulkan daripada keterangan SP13 bahawa dia menurunkan Along dan OYDT di KM 28 dan kemudiannya OYDT tinggal seorang sahaja. Penafian SP13 meninggalkan tempat bertugas adalah juga disokong keterangan rakan setugas SP19. OYDT dilihat SP10 dan SP11 di Pandan Jaya pada malam 25 Disember 1999. OYDT membunuh Along kerana dia mengesyaki hubungan rapat antara Along dengan SP6. Kalau setakat mahu bertanya Along tentang hubungannya dengan SP6 OYDT tidak perlukan bantuan SP13 untuk membawa Along ke KM 28 Jalan Kuala Kelawang-Genting Peras, Jelebu di waktu malam yang gelap. C D

Guni berisi mayat yang ditemui di dalam semak di cerun yang lebih kurang 20–30 kaki ke bawah dari tebing itu memberikan inferens bahawa ia adalah usaha agar ia tidak dapat ditemui dan dengan itu perlakuan jenayah tidak dapat dikesan. E

SP13 menurunkan OYDT dan Along berdua tetapi apabila SP13 datang untuk mengambil mereka semula dia bertanya mana Along OYDT menjawab 'biarkanlah dia'. Selepas SP13 bertanya beberapa kali OYDT mendiamkan diri dan termenung. Apabila kehilangan Along dilaporkan di dalam akhbar SP13 bertanya OYDT tetapi dia tidak memberikan apa-apa jawapan cuma setakat berkata 'apa-apa hal saya bertanggungjawab'. Jawapan dan tindak balas OYDT terhadap soalan SP13 tentu sahaja mengundang persoalan. Ia juga memberikan inferens bahawa OYDT tahu keadaan sebenar apa yang telah terjadi ke atas Along. F

Mayat yang dijumpai di dalam guni dalam keadaan leher dijerut dan kedua-dua kaki diikat dan kemudiannya guni didapati di dalam tempat yang curam dengan jelas membuktikan niat membunuh seperti yang diperuntukkan s 300(a) Kanun Keseksaan. G

Dua panggilan telefon yang diterima oleh keluarga Along menuntut wang RM500,000 ditimbang bersama dengan terjumpa mayat Along dan keterangan saksi-saksi khususnya SP13 dan SP12 serta SP17 adalah lebih menjurus kepada kesimpulan bahawa ia hanyalah helah sahaja. Saya memutuskan demikian kerana saya telah pun memutuskan bahawa Along telah pun meninggal dunia pada ketika itu. H

Keterangan-keterangan yang telah dikemukakan oleh pendakwaan telah saya teliti dan setelah memberikan penilaian yang maksima saya memutuskan bahawa pihak pendakwaan telah berjaya mewujudkan kes prima facie untuk pertuduhan yang dihadapi oleh OYDT. Dengan itu OYDT telah dipanggil membela diri. I

[49] Dalam pembelaan perayu menyatakan beliau membawa si mati ke dalam kereta SP13 untuk sekadar bertanya tentang perhubungan si mati dengan isterinya. Beliau berhenti di KM 28 untuk buang air. Pada pendapat saya hakim bicara tidak khilaf menolak pembelaan perayu dengan memberi alasan perayu tidak payah pergi ke KM 28 yang sunyi hanya sekadar untuk bertanya soal hubungan SP6 dan si mati. Perayu boleh bertanya ketika di dalam kereta atau tempat lain dan tidak bersusah payah meminta SP13 memandu hingga ke KM 28. Adalah tidak munasabah untuk perayu membuang air di KM 28 dengan membawa si mati bersama. Lagipun perayu dan si mati pernah turun dari kereta SP13 terdahulu kira 2km melepasi KM 28. Di situ tertuduh boleh buang air kecil jika mahu. Saya juga diingatkan setiap kali perayu turun dari kereta SP13 dia membawa si mati.

[50] Mengikut fakta keterangan guni berisi mayat si mati dijumpai di tempat yang sama (KM 28) di mana perayu kononnya hendak membuang air. Yang anehnya beliau terpaksa membawa si mati bersama.

[51] Mengenai kemungkinan si mati diculik dan dibunuh oleh penculik kenapa P23 dijumpai di tempat kejadian (KM 28) di mana perayu dan si mati ada bersama buat kali terakhir. Pada hemat saya ia adalah lebih daripada kebetulan (*coincidence*) bahawa si mati diculik dan dibawa dalam guni untuk dibuang di kawasan KM 28 iaitu tempat terakhir mereka berdua berada.

[52] Satu persoalan lagi kenapa perayu beria-ia sangat hendak ke KM 28 untuk buang air sedangkan dia boleh berbuat demikian di tempat dia dan si mati turun sebelum itu iaitu hanya kira-kira 2km melepasi KM 28. Kenapa perayu menyuruh SP13 berpatah balik ke KM 28. Ini menimbulkan inferens tertuduh mempunyai muslihat.

[53] Hakim bicara tidak khilaf bila menolak pembelaan perayu bahawa si mati balik sendiri. Adalah tidak munasabah bahawa si mati mahu ditinggalkan di tepi hutan tebal yang sunyi di tengah malam, lagipun dalam bulan Ramadan. Keterangan SP13 sudah cukup untuk menolak cerita perayu. SP13 sendiri dalam keterangannya mengaku bila beliau bertanya dengan tertuduh beberapa kali kerana risau tentang si mati yang ditinggalkan seorang diri di tempat kejadian, perayu di samping menyatakan biarkan, dia juga termenung. Akhir sekali kalau hendak buang air kenapa mesti menyuruh SP13 pergi dari situ dan datang balik 45 minit kemudian.

[54] Atas keterangan di atas hakim bicara tidak silap dengan menyatakan pembelaan perayu tidak menimbulkan keraguan munasabah ke atas kes pendakwaan.

[55] Melalui keterangan SP13, hakim bicara menerima pembuktian mengenai penglibatan tertuduh dalam kematian Along. Hakim telah memberi sebab kenapa dia menerima keterangan SP13 mengenai motif tertuduh yang cemburu, memaksa Along naik kereta SP13, memukul Along, meninggalkan Along keseorangan di tengah malam di tempat gelap dan sunyi di tepi hutan.

[56] Melalui keterangan SP7 terbongkar pembohongan tertuduh mengenai penemuan terakhir dengan Along di Pandan Jaya seperti yang diceritakan oleh P10 dan P11.

[57] Penerimaan keterangan saksi-saksi yang berwibawa dan boleh dipercayai adalah budi bicara hakim bicara. Mahkamah ini tidak akan campurtangan melainkan nyata kesilapan ketara dalam menilai fakta.

[58] Berikut saya perturunkan alasan penghakiman hakim bicara yang menolak pembelaan perayu. Katanya seperti berikut:

> Pembelaan juga mendakwa pihak polis telah mengetahui kewujudan guni (P23) di KM 28 Jalan Genting Peras-Kuala Kelawang pada 5 Januari 2000 setelah SP13 menghadirkan diri di IPK Kuala Lumpur. Oleh kerana polis telah mengetahuinya sebab itu telah ada kenderaan yang berhenti di tepi jalan ketika kereta yang membawa OYDT tiba pada 6 Januari 2000. Hujah ini tidak dapat diterima kerana sebenarnya seperti keterangan OYDT sendiri kereta yang membawanya telah dipotong oleh Pajero polis dan Pajero ini berhenti dahulu. Antara keterangan pendakwaan yang gagal dipatahkan oleh pembelaan ialah bahawa selepas pendedahan dibuat oleh OYDT pada 6 Januari 2000 SP25 telah memberikan taklimat kepada anggota-anggota polis dan sudah tentu pada ketika ini mereka telah dimaklumkan tentang KM 28 Jalan Genting Peras-Kuala Kelawang.
>
> Keterangan OYDT bahawa Along meninggalkannya di KM 28 Jalan Genting Peras-Kuala Kelawang juga tidak munasabah. Ini kerana tiada keterangan yang menunjukkan Along biasa dengan tempat itu. Lagipun tempat itu adalah kawasan yang tiada penghuni. Selain daripada itu pada kira-kira jam 1 pagi pada ketika itu bagaimanakah Along boleh memperolehi kenderaan untuk kembali ke rumahnya dan seterusnya bersahur. Keterangan SP12 juga telah gagal dipatahkan iaitu Along (mayat) dalam keadaan tidak memakai seurat benang, jadi dalam keadaan demikian mungkinkah Along akan berjalan kaki kembali ke Kampong Sg Kerayong?

[59] Seperti saya katakan terdahulu bahawa saya akan memperkatakan butiran petisyen perayu mengenai kelewatan hakim bicara menulis alasan penghakiman. Dalam kes ini kelewatan adalah selama 5 tahun 5 bulan 23 hari. Peguam perayu berhujah bahawa penyediaan alasan yang agak lama memprejudiskan perayu yang telah berada di dalam tahanan lebih dari lapan tahun. Saya setuju dengan hujah peguam perayu seeloknya alasan hendaklah disediakan dalam masa yang munasabah. Saya akur bahawa alasan yang disediakan lebih dari lima tahun oleh hakim bicara adalah tidak munasabah.

Adakah kelewatan menyediakan alasan penghakiman membawa ketidakadilan kepada perayu sudah cukup membolehkan mahkamah membebaskan perayu daripada pertuduhan?

[60] Kebelakangan ini telah menjadi lumrah dalam petisyen rayuan mengenai isu kelewatan para hakim menyediakan penghakiman. Pihak perayu mengambil peluang untuk mendapat simpati mahkamah ini supaya hal keadaan sedemikian hendaklah diberi manfaatkan kepada perayu atas alasan kelewatan menyediakan alasan penghakiman memprejudiskan perayu hingga menjerumus kepada ketidakadilan berdasar berkemungkinan daya ingatan hakim bicara tergugat atas penilaian perilaku (*demenour*) saksi-saksi. Dan juga penghayatan hakim mungkin kelal (*evaporated*) ditelan masa kelewatan. Oleh yang demikian apa-apa yang tidak termasuk (*omission*) dalam alasan harus diberi manfaat kepada perayu.

[61] Saya amat peka dalam hal keadaan sedemikian dan seharusnya hakim-hakim menyediakan alasan penghakiman dalam masa yang munasabah. Walau bagaimanapun pada hemat saya bukan semua kelewatan menulis alasan boleh dimanfaatkan. Munasabah atau tidak bergantung kepada setiap latar belakang kes.

[62] Dalam kes *Amathevelli a/p R Ramasamy v Public Prosecutor* persoalan yang sama dibangkitkan. Mahkamah ini dalam keputusannya memetik kata-kata Mohamad Azmi HMA (ketika itu) dalam kes *Tan Hun Wah v Public Prosecutor and another appeal* [1994] 1 MLJ 382 seperti berikut (dalam bahasa asal):

> There are however many causes of delay in court proceedings, and the delay itself can take the form of an abuse of process or may appear in various forms of prejudice or unfairness. This principle that 'justice delayed is justice denied' is of general application, and it does not follow that every form of delay, though frowned upon by the courts, should result in vitiating the whole proceedings.

[63] Seterusnya Raus Sharif HMR berkata juga (dalam bahasa asal):

> We adopt the principle as enunciated by the Supreme Court. In the present case, it took the learned trial judge about five years to supply the grounds of judgment to the accused. It is regrettable, but we are of the same view with the Supreme Court that it should not necessary result in vitiating the whole proceedings. This is more so when it is not shown to us through the notes of evidence that the appellant has suffered prejudice as the result of the delay in supplying the grounds of judgment to the accused. Further, we hold the view that in the administration of justice, the courts must be fair not only to the accused person, but must also be fair to the state and society. It would not be fair to the state and society whose penal law are made and administered, if the accused is given an outright acquittal just because of the

delay in supplying the grounds of judgment. This is especially so when the accused has been found guilty of a serious crime of murder. We, therefore hold that this appeal must be heard on its merits.

[64] Dalam rayuan ini saya dapati hakim bicara tidak menyentuh mengenai perilaku saksi-saksi. Beliau hanya membuat penilaian berdasarkan fakta keterangan. Daripada keputusan nas-nas di atas sekiranya hakim bicara hanya berpandu kepada fakta keterangan sahaja dan tidak membuat penilaian perilaku (*demenour*) saksi-saksi tempoh masa yang diambil untuk menyediakan penghakiman tidak memprejudiskan perayu. Andai kata jika fakta keterangan menyatakan warna salji itu putih, warna salji tidak akan bertukar menjadi hijau walaupun alasan penghakiman ditulis beberapa tahun kemudian, mahu pun selama-lamanya. Apa yang harus diberi pertimbangan oleh mahkamah ini ialah merit sesuatu kes berdasarkan keseluruhan keterangan bagi menegakkan keadilan sejagat.

[65] Setelah meneliti alasan penghakiman dan dibandingkan dengan nota keterangan serta dibantu oleh hujah kedua-dua pihak saya dapati tiada ketidakadilan timbul hasil keputusan Mahkamah Tinggi. Saya dapati hakim bicara telah membuat penilaian dan pertimbangan wajar di peringkat pendakwaan dan mahupun di peringkat pembelaan. Saya bersetuju dengan pendapat hakim bicara yang menolak pembelaan perayu.

[66] Akhir sekali saya berpandangan keterangan-keterangan ikut keadaan seperti tersenarai terdahulu terlalu kukuh menunjukkan kesalahan perayu. Pintalan tali keterangan terlalu banyak bukan setakat menjadi tali bahkan seutas tali yang besar mustahil untuk dipotong. Pada hemat saya tanpa penerimaan P32 di bawah s 27 AK sudah cukup untuk mensabitkan perayu. Dengan penerimaan P32 sebagai keterangan memberi kekebalan kepada kes pendakwaan terhadap tertuduh. Justeru itu saya memperakui penghakiman hakim bicara mengenai sabitan dan kesalahan serta hukuman yang dikenakan. Keputusan beliau dikekalkan dan rayuan perayu harus ditolak.

Ahmad Maarop JCA:

THE CHARGE

[67] The accused (the appellant in this court) was charged in the High Court with the following charge of murder:

Bahawa kamu pada 26 Disember 1999, lebih kurang jam 1.00 pagi di tepi jalan di kawasan KM 28 Jalan Kuala Kelawang-Genting Peras, di dalam Daerah Jelebu di dalam Negeri Sembilan telah melakukan pembunuhan dengan menyebabkan

kematian SABI'UL MALIK BIN SHAFIEE KP: 800422-14-5521 dan dengan ini melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

[68] At the close of the prosecution's case, the High Court held that the prosecution had proved a prima facie case and called upon the appellant to enter on his defence. The appellant gave evidence on oath. At the end of the case, the learned trial judge found the appellant guilty as charged and sentenced him to death. The appellant has appealed against the said decision. Hence the present appeal before this court.

SUBMISSION OF LEARNED COUNSEL FOR THE APPELLANT

[69] In his lengthy submission attacking the conviction, learned counsel for the appellant raised a number of grounds some of which overlapped. The grounds raised can be grouped under the following main topics:

(a) delay in the preparation of the grounds of judgment;

(b) s 27 of the Evidence Act 1950;

(c) circumstantial evidence; and

(d) the appellant's defence.

I will deal with these grounds in turn although not necessarily in the order that the grounds were argued by learned counsel for the appellant.

The delay in the preparation of the grounds of judgment

[70] Learned counsel for the appellant submitted that in this case there was a delay of about five and half years in the preparation of the grounds of judgment by the learned judge of the High Court. He submitted that the inordinate delay could not be accepted as it had caused very grave injustice to the appellant, in that the appellant had been deprived of proper and fair consideration by the learned judge, of the evidence and the issues raised in connection with the same, as the delay would have blurred the learned judge's impression on the evidence and the demeanour of the witnesses in this case. Similar complaint was raised and argued in *Amathevelli a/p R Ramasamy v Public Prosecutor* [2008] 3 MLJ 782; [2008] 4 CLJ 413, in which there was a delay of slightly more than five years before the grounds of judgment was provided by the learned trial judge. In that case, in declining the plea by learned counsel for the accused that the latter be released forthwith, this court adopted the principle enunciated in *Tan Hun Wah v Public Prosecutor and another appeal* [1994] 1 MLJ 382, and held that not every form of delay though frowned upon by the courts should necessarily result in the whole proceeding being vitiated. In delivering the judgment of the court Raus Sharif JCA said:

> We adopt the principle as enunciated by the Supreme Court. In the present case, it took the learned trial judge about five years to supply the grounds of judgment to the accused. It is regrettable, but we are of the same view with the Supreme Court that it should not necessary result in vitiating the whole proceedings. That was more so when it was not shown to us through the notes of evidence that the appellant has suffered prejudice as the result of the delay in supplying the grounds of judgment to the accused. Further, we hold the view that in the administration of justice, the courts must be fair not only to the accused person, but must also be fair to the state and society. It would not be fair to the state and society whose penal law are made and administered, if the accused is given an outright acquittal just because of the delay in supplying the grounds of judgment. This is especially so when the accused has been found guilty of a serious crime of murder. We, therefore hold that this appeal must be heard on its merits.

[71] I agree. Applying the same principle to the instant appeal, I hold that this appeal must be heard on its merits.

Evidence under s 27 of the Evidence Act 1950

[72] On 5 January 2000 the appellant was arrested. On 6 January 2000 he was questioned by DSP Nor Azizan bin Anan ('SP25'). In the course of the questioning on that day at about 7.45am, the appellant gave SP25 certain information which was reduced into writing by SP25 in P32. Learned counsel for the appellant objected to the information being admitted in evidence. The learned judge held a trial within a trial, at the end of which he held the information in P32 to be admissible in evidence under s 27 of the Evidence Act 1950. The information given was:

> MAYAT ALONG YANG SAYA ISIKAN DALAM GUNI TELAH SAYA CAMPAKKAN DI TEPI JALAN KE KUALA KLAWANG DAN SAYA SETUJU UNTUK TUNJUKKAN TEMPAT ITU.

The appellant then led SP25 and the police party to KM 28 Jalan Kuala Klawang — Genting Peras (KM 28), where the appellant pointed to a slope (*orang yang dituduh menunjukkan ke arah suatu lereng bukit di situ*), and where, after an immediate search, a gunny sack (P23) which was tied at its end was found in the bushes. P23 was taken to the UKM Hospital. On cutting open P23, Dr Shahrom bin Abd Wahid, a pathologist from the Forensic Unit, Pathology Department, Medical Faculty, UKM Hospital ('SP12') found in it a naked human body which was in advanced stage of decomposition. As will be shown later that was the body of Sabi'ul Malik bin Shafiee ('Along'). More of this will be said later when I deal with the evidence of SP12.

[73] In contending that P32 should not be admitted in evidence, learned counsel raised three main grounds as follows:

(a) the information in P32 was not given voluntarily by the appellant;

(b) the police had already known before 6 January 2000, about the place at KM 28 where P23 was found; and

(c) certain part of the information in P32 did not distinctly relate to the discovery of the body.

[74] I will deal with these grounds in turn.

The information was not given voluntarily by the appellant

[75] I do not think there is any merit on this point. To answer the point raised by learned counsel for the appellant I refer to the recent decision of this court in *Amathevelli a/p R Ramasamy v Public Prosecutor* where it said at pp 425–426:

> 22 The way s 27 of the Evidence Act 1950 should be approached has been fairly worked out in many cases. In *Francis Antonysamy v Public Prosecutor* [2005] 2 CLJ 481, the Federal Court after considering a long line of authorities, held at pp 498–499 that:
>
> > In our opinion it is illogical to suggest that s 27 is subject to the voluntariness rule in s 24. If that were to be so the desired evidence can be admitted under s 24 without there being any need for s 27. The fact that s 27 has been specifically enacted is therefore a clear indication that it has a purpose of its own to serve. As it applies only to a restricted and specified type of evidence as opposed to s 24 it can only mean that it is an independent provision which is unaffected by s 24, or, for that matter, any other statutory provision regulating the manner of taking or recording statements from any person...
> >
> > *... Since voluntariness is not a condition of admissibility of information supplied under s 27 the privilege against self incrimination which is manifested in an involuntary statement or in a statement made in breach of the requirements of s 112 must be deemed to have impliedly abrogated insofar as s 27 is concerned. It follows that the argument of learned counsel that s 27 is subject to the voluntariness rule in s 24 and the privilege against self incrimination in s 112 cannot be sustained.*
>
> 23 In fact, as early as in 1971, Raja Azlan Shah J (as his Royal Highness then was) in *Chandrasekaran & Ors v Public Prosecutor* [1971] 1 MLJ 153, has this to say on s 27. At p 158 he said:
>
> > *Section 27 is a concession to the prosecution. It is the express intention of the Legislature that, even though such a statement is otherwise hit by the three preceding sections, vis ss 24–26 of the Evidence Ordinance, any portion thereof is nevertheless admissible in evidence if it leads to the discovery of a relevant fact.* The reason is that, since the discovery itself provided the acid test, the truth of the statement that led to the discovery is thereby guaranteed. Admissibility of

evidence under s 27 is in no way related to the making of the confession; rather, such evidence is admitted on clear grounds of relevancy as directly connecting the accused with the object recovered …

24 *From the above authorities, it is clear that for information leading to discovery of a fact or thing to be admissible under s 27 of the Evidence Act 1950, there is no duty on the prosecution to establish the voluntariness of the information. In the present case, no doubt a trial within a trial was conducted by the learned trial judge (which in fact is not necessary), it appears from the record that it was not for the purpose of establishing the voluntariness of the information. It was for the purpose of determining whether the ingredients of s 27 of the Evidence Act 1950 had been fulfilled.* (Emphasis added.)

[76] Reverting to the present appeal, although voluntariness was not a condition of admissibility of the information supplied under s 27 of the Evidence Act (in P32), the learned trial judge had conducted a trial within a trial. At the end of the trial within a trial, upon considering the evidence adduced by the prosecution and the evidence of the appellant and upon considering the submission by learned counsel for the appellant as well as the submission by the learned deputy public prosecutor, the learned judge held that the information in P32 was given by the appellant voluntarily. The learned trial judge also held that P32 was a 'contemporaneous record' of what was actually said by the appellant. I have carefully considered the whole of evidence led in the trial within a trial. I am satisfied that any reasonable judge faced with the evidence produced during the trial within a trial would have held, as the learned trial judge in the present case held, that the information in P32 was given voluntarily.

Whether the police knew before 6 January 2000, about the place where P23 was found

[77] Learned counsel's submission that the police had known before 6 January 2000, about the place at KM 28 where P23 was found, was based on the fact that SP13 was questioned by the police on 5 January 2000. In support of his submission learned counsel also relied on what he claimed to be a discrepancy in SP27's answers in evidence in the trial within a trial and the main trial. He contended that although in the trial within a trial SP27 said, 'Polis ada soal siasat SP13. SP13 datang ke IPK pada petang 5/1/2000' (p 16, Vol 1 of the appeal record), on 18 October 2000 during the main trial, SP27 at p 555, Vol 2 (of the appeal record) denied knowledge as to when was SP13 investigated. Continuing his submission learned counsel said:

At page 556 he has this to say: masa *rebuttal* pada 14–9–2000 saya menyatakan kemungkinan SP13 dipanggil untuk soal siasat oleh SP25 pada 5–1–2000. Pada 13–1–2000 saya tahu untuk kali pertama bahawa SP13 membantu siasatan. Hari

ini saya tidak ingat sama ada SP13 datang ke IPK pada 5–1–2000 sebab saya tiada catitan. Masa saya beri keterangan pada 14–9–2000, saya ingat tetapi hari ini betul-betul tidak ingat.

And at pp 556–557 he stated:

Soalan: Siasatan ke atas SP13 satu faktor penting dalam kes ini?

Jawapan: Setuju.

Soalan: Bagaimana hari ini lupa sedangkan pada 14–9–2000 ingat fakta bahawa SP13 datang ke IPK pada 5–1–2000.

Jawapan: *Saya tidak boleh jawab*.

[78] Firstly, I find that in his evidence at p 555, Vol I of the appeal record, SP27 did not deny any knowledge about when SP13 was investigated. What SP27 said at p 555 was:

Mohd Fadzil B. Mohd Yatim (SP13) tidak pernah ditangkap polis berkaitan kes ini. Saya tidak ingat bilakah SP13 disoal siasat. Saya tidak ingat tarikhnya.

[79] What SP27 said at p 555 was true. It is a fact that SP13 came to IPK and he was questioned by the police. But he was never arrested.

[80] Secondly, just because SP27 could not remember on 18 October 2000 whether SP13 came to IPK or not on 5 January 2000, it does not mean he had something to hide and that the inference must be made that the police had already known on 5 January 2000 about P23 being hidden at KM 28.

[81] Learned counsel then submitted on the photographs (P5A–P5F). He said:

SP25, when questioned, said that the photographs were taken in *sequence* as the event unfolded i.e He did not wait for a photographer to be ready or reach there so as to photograph them. This would only suggest that the photographer is already waiting there.

[82] What SP25 said in his evidence under cross-examination in the trial within a trial was:

Gambar-gambar (P5) diambil *serentak*, ia bukan lakunan. Masa OYDT keluar dari kereta jurugambar sudah sedia untuk mengambil gambar.

[83] In my view the way the photographs were taken, whether in sequence or 'serentak' cannot lead to the inference that the police had already known about where P23 was hidden before 6 January 2000.

[84] In his evidence SP25 disagreed with learned counsel's suggestion in cross-examination that the photographer ('SP3') had already reached KM 28 earlier than the rest of the officers in the police team and the appellant, and was waiting there. That evidence of SP25 is corroborated by SP3. In his evidence, SP3, said on 6 January 2000 at about 10.20am he reached KM 28 and that he was there with SP27. He said the police team, the pathologist, the SMART personnel and the appellant were also there. There is nothing in SP3's evidence to show that he had reached at KM 28 earlier than the rest and was waiting there for them to arrive. SP3 was not cross-examined at all.

[85] Upon considering the evidence of SP25, SP27, ACP Hadi Ho and Supt Takbir Ahmad bin Nazir Mohamad, I find nothing to show or from which inference could be made that the police had already known about where P23 was hidden at KM 28 before 6 January 2000.

[86] It is important to consider what evidence was given by the appellant in support of the allegation on the prior knowledge of the police about the whereabout of P23. In his evidence in the trial within a trial, the appellant said that on 6 January 2000, he was forced to sign on P32 although he did not know its contents because he was scared as a result of the threat he received on 5 January 2000. It is therefore important to consider his evidence as to what happened on 5 January 2000, the gist of which is as follows. In the morning of 5 January 2000, he was taken from the lock up and brought to the office of Supt Takbir. There, he alleged that Supt Takbir forced him to admit, failing which his wife and friends would be detained. The appellant said he kept quiet. Supt Takbir punched him on his forehead and shoulder. From Supt Takbir's office, he was taken to SP25's office. The appellant said there, SP25 told him to admit. According to the appellant, SP25 said 'polis telah menemui mayat di Kuala Klawang'. The appellant said SP25 told him to admit that that was Along's body. Ten to fifteen minutes later the appellant was taken to ACP Hadi's room where the appellant said he was again asked to admit. In the course of questioning in that room mention was also made about a body having been found.

[87] Since all those events as alleged by the appellant took place in the morning of 5 January 2000, his allegation about SP25 telling him that the police had found a body at Kuala Klawang, and that in ACP Hadi's room mention was also made about a body having been found cannot be true, because SP13's questioning by the police (from which the defence contended that police had acquired prior knowledge about the existence of P23 at KM 28), took place only in the evening of 5 January 2000.

[88] There is yet a more crucial matter which must be dealt with in considering the defence contention on the alleged prior knowledge by the

police. It is SP13's evidence. This was not touched by learned counsel in his submission. In this regard, as I will show later, there is nothing in SP13's evidence (or for that matter even from the appellant's own evidence) to show or suggest that SP13 knew or suspected what the appellant wanted to do at KM 28, or what the appellant or Along did when he left them at about 12.50am on 26 December 1999. It is a fact that SP13 was questioned by the police. In his evidence in examination-in-chief SP13 said:

> Pada 5.1.2000 saya dipanggil ke bahagian Jenayah Berat, IPK, Kuala Lumpur. Saya tidak ditangkap. Saya tidak ditangkap berkait kes ini. Pada 5.1.2000 itu saya berjumpa dengan C/I Mohd. Hashim. Saya dipanggil C/I Mohd. Hashim untuk berjumpa dengan DSP Nor Azizan.
>
> Berkaitan dengan kes ini saya ada bawa anggota polis ke Pandan Jaya. Saya telah dibawa oleh C/I Mohd. Hashim pergi ke Pandan Jaya lebih kurang jam 10.15 p.m. pada 2.2.2000. Kami ke situ untuk pengecaman tempat di Jalan Pandan 3, Jalan Pandan 3/8, Jalan Pandan 3/9 dan Jalan 3/10. Saya tidak biasa dengan jalan-jalan di situ.

In examination-in-chief SP13 also said:

> Selepas 25/12/99 saya *tidak pernah* bawa polis ke KM 28 Jalan Klawang. (Emphasis added.)

The evidence of SP13 which I have set out, stood firm and unshaken. I find that he was never challenged on that evidence. It was never put or suggested to him that he told the police about the whereabouts of P23 or that he had taken the police to KM 28.

[89] In the light of what I have said, I cannot accept learned counsel's contention that the prosecution failed to prove beyond reasonable doubt that the police did not know before 6 January 2000, about the place where P23 was hidden.

[90] I am mindful of the possibility of misuse of s 27 of the Evidence Act by certain overzealous police officers. I am aware of *Public Prosecutor v Liew Sam Sheong* [1982] 1 MLJ 223, where it was held that on the surrounding circumstances of the case and on the balance of probabilities, the police had prior knowledge of the existence of the incriminating exhibits in that case. However, I find that the facts in that case and the facts in present appeal are poles apart. In *Public Prosecutor v Liew Sam Sheong*, the prosecution's case was that on 18 December 1977, the accused was arrested. Among other things a bunch of keys was recovered from the accused's pocket. On 28 December 1977, the accused gave certain information to one Inspector Wong which led to the discovery of ammunition, homemade grenades and homemade bombs, (the subject matter of the charge) at No 97A, Jalan 29, Overseas Union Garden, Kuala Lumpur. The learned trial judge in that case found on the

evidence of the chief tenant of the premises and one Sgt Saaban, that some police officers from the special branch had gained entry into the premises a few days prior to the alleged discovery of the incriminating exhibits in that case, which was said to be pursuant to the information given by the accused. This is what the learned judge said in that case:

> In the present case, there in no reason to doubt Sgt Saaban's evidence that the chief tenant Wong Kim Fah (PW7) had lodged a police report at Petaling Police Station on 21 December 1977 (see exh D16). The gist of this report is that Wong (who occupied the ground floor directly below No 97A) had seen strangers occupying premises No 97A. The report is consistent with Wong's testimony in cross-examination that two days before he lodged the police report (ie on 19 December 1977), he saw three persons — a Malay, a Chinese and one Indian — going upstairs to premises No 97A in a suspicious manner. According to Sgt Saaban, when he went to the premises to investigate on 21 December 1977, a male Indian came downstairs to unlock the collapsible iron gate. The man told him that he was from special branch and produced his authority card. The Sergeant was satisfied with the explanation and went upstairs with the male Indian, where he saw six or seven persons sleeping in the hall covered with blankets. In this connection, I have no hesitation in accepting the evidence of Sgt Saaban. *Since the accused was arrested on 18 December, and the only bunch of keys to the premises were found on him, it is reasonable to assume that the three persons whom Wong Kim Fah saw on 19 December and also the people whom Sgt Saaban saw in the premises on 21 December, must be from the police, and they must have used the keys recovered from the accused on 18 December to gain entry to the premises without the help of the accused*. As such, the fact that it was the accused who unlocked the door for the police on 28 December, does not carry much weight in the prosecution case. I cannot accept prosecution contention that the people found in the premises might be communist elements, because after the arrest of the accused, it would have been dangerous for any member of the MNLF to visit or stay on the premises. *The only reasonable inference to be drawn is that, after the arrest of the accused on 18 December, a police party must have gone to the premises by using the bunch of keys recovered from the accused, and they stayed there in ambush, but unfortunately for them, only Sgt Saaban appeared on 21 December. In view of the quantity of ammunition, hand grenades, bombs and other incriminating exhibits found on the premises, it is also reasonable to assume that the police must have known about their existence from 19 or 21 December. As such, it is my finding that this is a clear case where the police investigation is attempting to turn an ordinary 'recovery' of incriminating exhibits into a 'discovery' in order to utilities the provisions of s 27 of the Evidence Act*. (Emphasis added.)

[91] No evidence or circumstances of such a strength, and capable of raising a reasonable doubt is available in the present appeal. On the evidence available in this case, there is no doubt that P23, which contained the body of Along, was discovered by the police pursuant to the information given by the appellant to SP25 on 6 January 2000, and pursuant to the appellant leading the police to KM 28 where he pointed to a slope from where, after a search, P23 was found.

A Whether certain part of the information in P32 ought not to be admitted in evidence

[92] The law under s 27 of the Evidence Act 1950 is clear. Only so much of the information as relates distinctly to the fact thereby discovered may be proved. The scope and application of the provision under s 27 had been explained in the oft cited case of *Pulukuri Kottaya v Emperor* AIR 1947 PC 87, when in delivering the judgment of the Privy Council, Sir John Beaumont said at pp 70–71:

> Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. *The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the the exact nature of the fact discovered to which such information is required to relate*. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr Megaw, for the Crown, has argued that in such a case the 'fact discovered' is the physical object produced, and that any information which relates distinctly to the object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of s 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction Their Lordships think that the proviso to s 26, added by s 27, should not be held to nullify the substance of the section. *In Their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact*. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. *Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the*

commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant. (Emphasis added.)

[93] Thus, in *Ram Lochan Ahir v State of West Bengal* AIR 1963 SC 1074, the statement of the accused that he had buried the body of the deceased in the mud in a tank into which he also threw a knife and his pointing out the place from where a human skeleton and a knife were recovered was held to be admissible. In *Punja Mava v State of Gujarat* AIR 1965 Guj 5, the statement that the accused had killed his brother with an axe would be clearly inadmissible. However, the words 'I removed and buried the dead body of the deceased in the Kuvawala field' and the fact of discovery as the result of this information, could be proved under s 27 .

[94] The application of s 27 of the Evidence Act 1950, was also explained by the Federal Court in *Francis Antonysamy v Public Prosecutor* [2005] 3 MLJ 389; [2005] 2 CLJ 481. In that case, in the course of the investigation, the accused told one ASP Mohd Sabri ('PW17'): 'Tanam kepala Ali di kebun kelapa sawit Cheruk Pusing.' PW17 recorded that statement on a piece and paper (exh P46A). Later, the accused led PW17 and a police party to a spot at Jalan Maran. There, the accused told PW17, 'Di sinilah saya buang itu parang, rotan dan seluar Ali'. The rattan cane and the trousers were recovered. At another spot the accused told PW17: 'Sinilah tempat saya tanam kepala Ali.' The head was found there. The Federal Court held that the first information given by the accused (recorded in P46A) with regard to the burying of the head was not admissible as it was not specific. But that did not affect the admissibility of the second statement on the same subject matter — ie 'Sinilah tempat saya tanam kepala Ali'. In this regard, delivering that judgment of the court, Augustine Paul JCA (as he then was) said at pp 408–409 (MLJ) and p 504 (CLJ):

> However, if the first statement of the accused is vague and the precise information is received as a result of a subsequent statement by him, it is the latter that is admissible (see *Vinayak V Joshib v State* AIR 1968 Pun 120). This is for the obvious reason that the first statement, being not precise, is not the cause of discovery and is therefore not admissible. When the information contained in the statement of the accused does not disclose the exact place where the object was kept concealed by him then even if the object is recovered it cannot be said that it was recovered pursuant to the information furnished by the accused (see *Paramasivan v State* [1990] Cr LJ 1491; *State v Ram Ch* AIR 1965 Or 175; *Orissa v Nursingha* [1990] Cr LJ 1676).
>
> *As the first information supplied in this case with regard to the burying of the head under s 27 is not specific it is inadmissible together with exh P46A which relates to it. This does not affect the admissibility of the second statement on the same subject matter*. (Emphasis added.)

[95] Reverting to the instant appeal, the appellant gave only one statement and unlike the first statement in *Francis Anthonysamy*, the information given by the appellant was more precise as to the place where the 'fact' was discovered. Then the appellant led the police to KM 28, where he pointed to a slope, and from where, after a search, P23, which contained Along's body was found. Applying the principles as enunciated in the authorities referred to earlier, I am of the view that the whole of the information in P32, which was given by the appellant to SP25, distinctly related to the discovery of P23 (which contained Along's body) in some bushes at the slope of the road at KM 28.

[96] The learned trial judge did not err when he held the information in P32 to be admissible in evidence under s 27 of the Evidence Act 1950.

Circumstantial evidence

[97] The thrust of learned counsel's submission under this heading was that the learned judge erred in holding that there was a prima facie case against the appellant, when the prosecution's case rested on very weak circumstantial evidence. Learned counsel contended that the learned judge did not direct his mind properly and adequately to the paucity of circumstantial evidence in this case. Learned counsel contended that the evidence adduced by the prosecution had failed to establish the offence of murder against the appellant. Elaborating on this, learned counsel submitted that there was insufficient evidence to conclusively prove:

(a) the cause and/or time of the death of the deceased;

(b) the intention to kill;

(c) the motive for the alleged murder; and

(d) the causal link between the appellant and the death of the deceased.

[98] Learned counsel also contended that the learned judge erred in making various erroneous and improper inferences which were not supported by evidence, which included the following:

(a) that the appellant had assaulted the Along to the point that the latter was rendered helpless to do anything; and

(b) that the appellant had made prearranged plan including getting a gunny sack to put in Along's body.

[99] There was no eyewitness to the alleged murder in this case. The case for the prosecution is entirely based on circumstantial evidence. Thus it is necessary for the court to undertake an examination and evaluation of the circumstantial evidence adduced by the prosecution in this case, bearing in

mind all the elements of the offence of murder under s 300 of the Penal Code which the prosecution must establish beyond reasonable doubt in order to bring home the charge against the appellant.

[100] I will commence the narration and examination of the evidence against the appellant with the evidence of Salina Ali ('SP6'), the appellant's wife. Since 1998, SP6 worked as an officer in charge of promotion (Malay section) at Life Records Recording Studio. Her job was to introduce and promote new singers. It was in that capacity that SP6 came to know Along sometimes in 1998. At the material time Along was a singer with the band known as 'the Spoon'. The relationship between SP6 (as a promoter with the recording company) and Along (as a singer) was intimate. Because of that there were occasions when SP6 had misunderstanding with the appellant. Indeed, the appellant had scolded SP6 for being close with Along and for going out often with the latter. In this regard, it must also be added that under cross-examination, SP6 disclosed that sometimes in October 1999, Along and his band had a stage show in Sarawak for three days. SP6 accompanied Along. The appellant did not follow SP6 to Sarawak. The appellant stayed behind to take care of their children. According to SP6, the organiser of the said show provided only one room. So, she and Along slept in the same room at night.

[101] On 25 December 1999 (which incidentally was in the month of Ramadhan), at about 8pm, SP6 left her parents' house at Kg Cheras Baru alone to go to Shah Alam to take her dress from a seamstress, driving a Proton Wira No WFH 7578. On the way as prearranged with Along, at about 8.30pm, SP6 stopped at a parking lot near some shop houses at Pandan Jaya and picked Along up, as Along also wanted to go to same place to collect his dress. Along left his maroon Hyundai Coupe No WFT 2755 there. SP6 and Along then proceeded to Shah Alam. Later, from Shah Alam SP6 drove back to Pandan Jaya and at about 10pm, she left Along at the same place in Pandan Jaya where Along had left his car. That was the last time SP6 saw Along alive. SP6 then drove back to her parents' house in Kg Cheras Jaya.

[102] I come to the evidence of Lance Corporal Mohd Fadzil bin Mohd Yasin ('SP13'), a friend of the appellant. SP13 was a very important prosecution's witness. On 25 December 1999, SP13, who was working as a personal body guard to the Yang di-Pertuan Agong, was on duty at Istana Negara from 4pm–8am (the next day). At about 8.30pm on 25 December 1999, SP13 received a telephone call from the appellant asking him to come to Lorong 3 Pandan Jaya. SP13 did not know why the appellant wanted him to go there but the appellant said it was important. Since the appellant was his friend, SP13 decided to oblige him. At about 9.15pm, SP13 left Istana Negara and arrived at Pandan Jaya 20 minutes later. SP13 met the appellant who was waiting for him at Jalan Pandan 3/9. The appellant got into SP13's car. SP13

proceeded to the *pasar malam* there to buy some food. After that the appellant asked SP13 to drive to Jalan Pandan 3/10. When they arrived at Jalan Pandan 3/10, the appellant asked SP13 to stop the car. The appellant pointed to Along's car which was then parked about 50 metres away. The appellant said that the car belonged to a singer named Along from the band known as 'the Spoon'. The appellant told SP13 to park his car with its front part facing the road. The appellant told SP13 that he suspected his wife (SP6) had gone out with Along and that he wanted to verify that. The appellant asked SP13 to wait with him in the car. While waiting in the car, the appellant told SP13 that he was having a family problem. SP13 said his wife was staying with his parents in Cheras Baru. The appellant also told SP13 that SP6 often leave the house and come back late.

[103] After waiting for about 20 minutes, SP6's car passed by in front of SP13's car. The appellant told SP13 that that was his wife's car. Later, the appellant told SP13 that SP6's car had stopped behind Along's car and that Along had alighted from SP6's car. Then, the appellant told SP13 that SP6 had driven off and that Along had got into his car. After about five minutes, Along's car passed by in front of SP13's car. SP13 saw Along driving the car. After Along's car had disappeared from their view, the appellant told SP13 to drive off. SP13 drove the car on the main road (Jalan Pandan 3) to go back to Istana Negara. When they were passing Jalan 3/9, the appellant told SP13 that he saw Along's car at Jalan Pandan 3/9. The appellant asked SP13 to turn back to Jalan 3/8. SP13 did as told. Then the appellant told SP13 to stop the car. The appellant came out of the car and walked to the right. Five minutes later the appellant came back to the car with Along. Both of them got into the car and sat at the back. The appellant then asked SP13 to drive on.

[104] SP13 drove to the main road. In the car the appellant asked Along with whom had he gone out and where had they gone to? Along did not answer. The appellant asked the same question repeatedly. On the way, somewhere in front of Wisma Tani, SP13 told the appellant that the car was running very low on petrol. The appellant kept quiet. SP13 proceeded on and arrived at Istana Negara at about 10.45pm. SP13 stopped the car and walked to the guard house. The appellant and Along stayed in the car. SP13 asked the guard at the guard house whether there was any instruction for him regarding his duty. SP13 was told that there was none. SP13 went back to his car and drove out of Istana Negara compound. The appellant and Along were still in the car. SP13 drove the car until the bus stop at Wisma Tani, where the appellant asked SP13 to stop. When SP13 stopped the car, the appellant and Along got out. SP13 proceeded on to refuel. After refuelling, SP13 came back to the place where the appellant and Along had alighted. The appellant and Along got into the car again. The appellant then asked SP13 to drive on to Cheras.

[105] SP13 then drove the car through Jalan Mahameru and entered the Seremban/Kuala Lumpur highway. From there SP13 proceeded to Taman Connought highway and Cheras/Kajang highway. SP13 said he did not know the reason for going to Cheras. After paying the toll at the Kajang/Cheras highway, at Batu 9 Hulu Langat, SP13 was told by the appellant to go to the left. Later, at a junction in the centre of a town the appellant told SP13 to turn to the left. Later still, the appellant told SP13 to drive on until they reach a town the name of which SP13 did not know. Upon reaching that town, the appellant told SP13 to make a right turn. SP13 drove on until a T-junction. The appellant then told SP13 to go to the left in the direction of Kuala Klawang. SP13 drove on as told by the appellant until they reached KM 28.

[106] According to SP13, during the journey from the bus stop at Wisma Tani until KM 28, there were conversations between the appellant and Along. The appellant asked Along repeatedly whether he knew Salina Ali (SP6). Along answered only once — that he knew Salina Ali. The appellant also asked Along repeatedly regarding the extent of his relationship with Salina Ali. When the appellant raised his voice, Along answered that they had only gone to the extent of kissing (*cium sahaja*). After that answer by Along, SP13 heard the sounds of a person being slapped several times, and then SP13 heard Along asking for forgiveness. SP13 told the appellant to stop, which the latter did.

[107] Coming back to KM 28, according to SP13, after reaching KM 28, he drove on for about 2–3km and then the appellant asked him to stop. SP13 stopped the car as told. The appellant and Along alighted from the car and walked to the rear of the car. SP13 remained in the car. After about five minutes, the appellant and Along got into the car again and both of them sat at the back seat. The appellant asked SP13 to turn back to Kuala Lumpur. SP13 did as told and drove on in the direction of Kuala Lumpur.

[108] On the way, somewhere before reaching KM 28, the appellant again asked SP13 to stop the car. SP13 did as told and stopped the car at a place which SP13 later found out to be about 100 metres from KM 28. The appellant and Along got out of the car. The appellant then told SP13 not to wait. The appellant asked SP13 to leave them there for about 30–45 minutes. That place was dark. SP13 did not know why the appellant asked him to leave both of them there. That was the first time SP13 came to that place. SP13 did as told and drove the car in the direction of Kuala Lumpur. SP13 left them there at about 12.50am on 26 December 1999. At that time SP13 did not suspect that anything was amiss.

[109] After driving until a T-junction, SP13 turned back to the place where he left the appellant and Along. Arriving there at about 1.30am on 26 December 1999, SP13 saw the appellant standing alone. Along was not there.

The appellant got into the car. SP13 asked the appellant where was Along. The appellant said we go back and leave him (*kita balik biarkanlah dia*). When SP13 asked the appellant again repeatedly, the latter kept quiet. SP13 said he dared not go out because it was dark. SP13 then turned back and drove in the direction of Kuala Lumpur. On the way, when SP13 asked the appellant again, the latter kept quiet and appeared to be in deep thought. As directed by the appellant, SP13 drove to Pandan Jaya and left the former at Jalan Pandan 3 at about 2.15am. SP13 then proceeded to Istana Negara and resumed his duty there.

[110] Upon careful consideration, I find SP13's evidence under examination-in-chief to be almost entirely unchallenged in cross-examination. I find SP13's evidence to be consistent in itself and fits in well with the rest of the evidence adduced by the prosecution and the circumstances of the case. I also find that there is nothing inherently improbable about his evidence. It is also important to add at this stage, that there is nothing to show that SP13 knew or suspected what the appellant wanted to do at KM 28, or what the appellant or Along did when he left them at KM 28 at about 12.50am 26 December 1999.

[111] Next, the evidence of SP10 must be dealt with. SP10 was Along's sister. She saw Along on 25 December 1999 at about 10.30pm at Jalan 3/10 Pandan Jaya when she went to the public phone booth there to make a phone call after buying drinks at a shop at Jalan 3/8. At that time SP10 saw Along in his car WFT 2755. SP10 saw Along using his handphone. After that Along called SP10 and gave her a plastic bag containing some letters and Hari Raya cards. Before that SP10 also saw the appellant in a car which was then in the process of being parked at Jalan 3/10. SP10 told Along about this.

[112] On 26 December 1999, when Along did not come back, SP10 told her father ('SP7') that he saw the appellant in a car at Jalan 3/10 the night before.

[113] On 26 December 1999 at about 11am, SP7 found Along's car at a parking lot at Jalan 3/10 Pandan Jaya with a punctured tyre.

[114] On 26 December 1999 SP7 invited the appellant, SP6 and his family to come to his house. The appellant, SP6 and SP6's mother came to SP7's house at about 6pm on 26 December 1999 and they broke their fast there. SP7 invited the appellant to his house because SP10 had told him that she (SP10) saw the appellant at the place where Along's car was parked on the night of 25 December 1999. SP7 asked the appellant whether he was at the place where

Along's car was parked the previous night. The appellant denied that he was there. SP8 also asked for the appellant's assistance. The appellant said he was also making effort to look for Along.

[115] On the same date (26 December 1999), SP7 lodged a police report vide Report No 21007/99 (exh P2). In the report SP7 stated that Along, who left the house on 25 December 1999, did not return and could not be contacted:

> Pada 25.12.99 pukul 8 malam, anak saya Sabi'ul Malik B. Shafiee telah keluar dari rumah seperti alamat di atas untuk ke Pandan Jaya. Kira-kira 10.00 malam adiknya bertemu dengan dia di pondok telefon Jln. 3/10. Menurut adiknya Sari'ul Raini Bt Shafiee ketika itu ada sebuah kereta Proton Saga sedang menunggu dan memerhatikan abangnya. Orang yang berada di dalam kereta itu memang dikenali oleh Sar'iul Raini. Setelah mengambil sesuatu dari abangnya, abangnya pun berlalu dengan memandu kereta Hyundai Coupe WFT 2755. Ketika itu juga kereta Proton Saga tersebut mengekorinya.
>
> Sebaik saja anak saya itu tidak kembali ke rumah, saya cuba menghubunginya tetapi gagal walaupun beberapa kali. Dan dia juga tidak menelefon ke rumah. Perkara seperti ini tidak pernah berlaku sebelum ini. Kerana dia jarang tak balik ke rumah. Kalau lambat pun selalunya dia akan menelefon dan memberitahu keadaannya.
>
> Pagi tadi 26.12.99 pukul 10 pagi saya telah membuat rondaan di Pandan Jaya dan menjumpai kereta WFT 2755 di tempat letak kereta Jln 3/9 dengan keadaan tayar depan sebelah kanan pecah. Sehingga saat ini tiada apa berita yang diterima.

I find SP7's evidence to be unchallenged.

[116] This brings me back to SP13's evidence. According to SP13, after 26 December 1999 he read in the newspapers that Along was kidnapped. Later, when he met the appellant at the office, SP13 asked the appellant about it. The appellant did not give any answer except to say that if there was anything he would be responsible (*Apa-apa hal saya bertanggungjawab*). This evidence was not challenged by the defence.

[117] On 5 January 2001, the appellant was arrested by SP25. As I have said earlier in this judgment, on 6 January 2000, the appellant led SP25 and a police party to KM 28. A team from SMART ('Pasukan Mencari dan Menyelamat') from Jalan Semarak, PULAPOL and SP12, also joined the police party at KM 28. I have also said that at a place at KM 28, the appellant pointed to a slope. In this connection, according to SP23 (an officer from the SMART team), after reaching KM 28 at about 10.20am on 6 January 2000, as directed, he went down a steep slope of the road using a rope. He said after going down for about 20 metres there was foul smell of carcass. He looked left and right but could not locate where the smell came from. He moved to his left and continued to locate

the source of the smell. Eventually, he found a gunny sack (P23) hidden in the bushes. He notified his officer about his discovery. He said he did not touch or examine the gunny sack.

[118] Short while later, using a rope SP12 came down to the place where SP23 found the gunny sack. According to SP12, he had gone down there to ensure that the recovery of the gunny sack would not damage its content. SP12 placed the gunny sack in a black plastic bag which was then tied to a stretcher. The black plastic bag was then pulled up onto the road, put in a police Land Rover under the charge of SP21 and driven to the UKM Hospital, where SP21 handed it over to SP12 on the same day.

[119] At about 2.40pm 6 January 2000, SP12 cut open the gunny sack which was tied at its end with a strip of cloth from part of a pair of Levis jeans with a label written 'W28 L30 501 4589', and found in it a naked body of a human being, in foetal position which was in advanced stage of decomposition. SP12 found that the right and the left ankle, were tied together with a strip of cloth which appeared to be a part of a pair of jeans. SP12 also found two strips of cloth from part of a pair of jeans around the bone of the neck (the cervical vertebrae). He also found in P23 a piece of cloth from part of a pair of jeans with four buttons. SP12 conducted post-mortem on the body. He found a fracture of the middle of the right rib. On internal post-mortem, he found that most of the tissues and muscles as well as internal organs such as the heart, the abdomen, the rectum, the peritoneum, the lever, pancreas, spleen, kidneys, the urethra, the bladder and the reproductive organ, had undergone decomposition:

> Pemeriksaan dalaman
>
> Ia menunjukkan tiada kulit kepala, tiada retak pada tengkorak, tiada selaput meninges dan tiada tisu otak kerana pembusukan. Pemeriksaan seterusnya menunjukkan bahagian lidah dan *thyroid* yang telah membusuk teruk dan tulang *hyoid* (pangkal lidah) tidak ditemui. *Thyroid cartilage* (atas pita suara) tidak ditemui. Otot-otot leher telah membusuk. Tulang leher tidak patah. Tulang dada juga tidak menunjukkan kepatahan. *Trache* dan saloran udara serta paru-paru telah membusuk teruk. *Thymus pericardium* (lapisan yang meliputi jantung), jantung, salor nadi agong, *artery*, *pulmonary* dan *oesophagus* tidak ditemui kerana proses pembusukan.
>
> Pemeriksaan abdomen menunjukkan terdapat bahagian bawah usus besar yang menunjukkan proses pembusukan tetapi tidak menunjukkan sebarang kecederaan.
>
> Bahagian *rectum* juga telah membusuk.
>
> Organ dalaman yang lain tidak ditemui kerana telah membusuk. Organ-organ itu ialah *peritoneum* (selaput dalaman abdomen), perut (*gaster*), usus kecil, hati, *pancreas*, *spleen* (limpa), kelenjar adrenal, buah pinggang, *urethra* (salor kencing), pundi kencing, dan organ reproduktif.

SP12 concluded the cause of death to be probable ligature strangulation. He estimated that the death had occurred between within one to two weeks before the date of the post-mortem.

[120] This brings me to the evidence of (SP5) on the DNA analysis carried out by him. In cross-examination, the defence did not seriously challenge SP5's findings, but in his submission, learned counsel for the appellant contended that there was a break in chain of evidence relating to the exhibits used by SP5 in his analysis. The exhibits used by SP5 were:

(a) a small piece of bone (in the plastic container 'A' (P9)), taken from the left thigh of the human body found in the gunny sack (P23);

(b) a small piece muscle (in the bottle 'B' (P10A)), taken from the right thigh of the human body found in the gunny sack (P23).

(c) blood sample taken from SP8 in tube 'A1' (P13A); and

(d) blood sample taken from SP7 in bottle 'B1') (P16A).

[121] Learned counsel submitted all those samples were taken by SP12. He pointed out that SP20, who assisted SP12 when the latter conducted the post-mortem, said that the writing on the label of the bottle P9 was written by SP12. Whereas, SP12 in his evidence said that the writing was not his. In respect of P10A, although SP20 said the marking 'B' on the sample was written by SP12, there was no evidence from SP12 himself to say that he put that marking. In respect of the blood sample (in P13A), learned counsel submitted that when it was sent to SP5, P13A was not sealed.

[122] Lastly, it was submitted that four other chemists had access to the freezer which was used by SP5 to keep the exhibits in question after receiving them. So, it was contended that there was a possibility that the exhibits were mixed up, and that therefore SP5 had used the wrong exhibits resulting in doubt on the accuracy of his eventual findings. With respect, for reasons which I will explain shortly, I do not think that there is any merit in the submission made by learned counsel as aforesaid.

[123] To me the crucial issues for determination are:

(a) whether the bone specimen (in P9) and the muscle specimen (in P10A) used by SP5 in the DNA analysis were actually the specimens taken by SP12 from the human body found in the gunny sack;

(b) whether the blood sample in P13A which was used by SP5 in the DNA analysis was the blood sample taken by SP12 from SP8; and

(c) whether the blood sample in P16A which was used by SP5 in the DNA analysis was the blood sample taken by SP12 from SP7.

[124] In considering these issues it is very important to bear in mind what was said by Suffian LP in delivering the judgment of the Federal Court in *Su Ah Ping v Public Prosecutor* [1980] 1 MLJ 75 at p 76:

> ... The complaint before us was not that there had been no proof that the exhibits were serviceable, but simply *that there was a 'break in the chain of evidence', and the prosecution should have called as witnesses all the officers through whose hands the exhibits passed from Inspector Takbir to the armourer and back to the Inspector*. We do not think there is merit in this point. *The question was whether the exhibits the Inspector produced were the guns and ammunition he found at the scene, and as when he produced them as those very guns and ammunition there was no objection by the defence, it would have been a waste of judicial time to call all the intervening handlers*. In our experience much judicial time is spent unnecessarily, notably in subordinate courts, in ensuring no break in the chain of evidence. In our judgment, if the officer who picked up an object at the scene produced it and identified it as that very object, that is enough, and there is no need to call every other officer who handled it.
>
> For this reason it is desirable for a police office who picked up an object that is easily marked such as a gun, to mark it well, in case it may be needed later on as an exhibit. There are, however, objects such as blood samples and the like that cannot be easily marked; it is only in the case of such objects that it may be necessary to call everybody who has handled it — *then only if there is doubt as to identity* … (Emphasis added.)

[125] The bone specimen in P9 and the muscle specimen in P10A were taken by SP12 from the human body found in P23 when he did the post-mortem:

> Masa post-mortem dijalankan saya ada ambil contoh (*specimen*):
>
> rambut;
>
> kuku;
>
> *otot daripada peha kanan; dan*
>
> *secebis tulang dari peha kiri*.
>
> Specimen-specimen itu telah diserahkan kepada polis untuk dihantar ke Makmal Kimia bagi pemeriksaan selanjutnya. *Specimen itu saya serahkan kepada pembantu saya yang bertugas hari itu Encik Abd. Rahman b. Md. Isa — dipanggil dan dicam. Encik Abd. Rahman meletakkannya ke dalam bekas yang dia pegang. Kemudiannya bekas itu ditutup dan dilabel oleh Encik Abd. Rahman atas arahan saya*.
>
> *Kemudian saya semak semula specimen dan label-label sewaktu mengisi Borang Kimia. Encik Abd. Rahman yang melekatkan label-label* (Emphasis added.)

[126] From the above evidence, it is important to note the bone and the muscle specimens together with the other two specimens taken were handed by SP12 over to his assistant, Abd Rahman bin Md Isa ('SP20'). SP20 put the

specimens in the containers held by him. On the instruction of SP12, the containers were closed and labelled by SP20. Then, SP12 checked the labels again. In his evidence in court, SP12 indentified the specimens in P9 and P10A respectively.

[127] Again, from SP12's evidence it is clear that on 11 January 2000 he had taken three blood samples from SP8 and that he himself marked the three test tubes containing the samples, with the markings A1–A3. On the same day, SP12 also took three blood samples from SP7. He marked the test tubes containing the blood samples, with the markings B1–B3.

[128] According to SP12, apart from the markings which he had made, SP20 also put other markings such as name, autopsy No (F25/2000) and the police report number. Then, in SP12's presence, the specimens were placed in separate envelopes and then sealed by SP20. In his evidence SP12 had identified P13A and P16A as well as the other blood samples taken by him.

[129] The aforesaid evidence of SP12 is corroborated by SP20. In his evidence in examination-in-chief, SP20 confirmed that on 6 January 2000 he assisted SP12 when the latter did the post-mortem on the human body found in P23. SP20 was present in the mortuary until the post-mortem was completed. SP20 confirmed that on 6 January 2000, he received the bone specimen and the muscle specimen as well as two other specimens from SP12. After labelling and sealing the samples with the seal of the Ketua Jabatan Pathology, Fakulti Perubatan, UKM, SP20 kept them in the *peti mayat* in the mortuary under lock and key:

> Pada 6.1.2000 saya terima 4 specimen daripada Prof. Madya Dr. Shahrom iaitu:
>
> tulang;
>
> tisu otot;
>
> kuku; dan
>
> rambut.
>
> Tulang saya masukkan ke dalam bekas plastik. Saya labelkan dan meteraikan dengan meterai Ketua Jabatan Pathology, Fakulti Perubatan U.K.M. Bekas plastik itu saya tandakan sebagai 'A'.
>
> Tisu otot saya masukkan ke dalam bekas plastik, dilabel dan dimeteraikan seperti tulang tadi dan ditanda dengan 'B'.
>
> Kuku saya masukkan ke dalam botol kaca, dilabel dan dimeteraikan juga seperti di atas iaitu 'A' dan 'B'. Ia juga ditanda 'C'.
>
> Rambut (kepala) dimasukkan ke dalam botol kaca, dilabel dan dimeteraikan juga seperti di atas. Ia ditanda 'D'.
>
> Kerja-kerja melabel dan membubuh meterai dibuat pada 6.1.2000.

Barang-barang itu (A, B, C dan D) disimpan di dalam Peti Mayat yang kosong di Bilik Mayat. Peti Mayat itu boleh dikunci. Saya kunci Peti Mayat itu dan kuncinya saya pegang.

[130] SP20 identified P9 as the container marked A which contained the bone specimen. SP20 identified P10A as bottle marked B which contained the muscle specimen. SP20 identified P11C as the bottle marked C which contained the hair specimen. In this regards he corrected himself. Earlier in his evidence, he said that the bottle C contained nail specimen. SP20 then identified P12 as the container marked D which contained the nail specimen.

[131] SP20 also confirmed that on 11 January 2000, he received from SP12, six blood samples in test tubes marked A1–A3 and B1–B3. SP20 put them in six separate envelopes. He marked the envelopes according to their respective contents. He then sealed each of the envelopes with the Ketua Jabatan Pathology, Fakulti Perubatan UKM seal, after which he kept them in the *peti mayat*.

[132] On 12 January 2000, SP20 handed over all those exhibits to SP27. This was confirmed by SP27 in his evidence. Regarding the first four exhibits, which he received in the sealed containers marked A, B, C and D, SP27 put the specimens in containers marked B and C in two separate envelopes. SP27 identified P9 as the sealed container containing the first specimen he received from SP20. Before sending it to the chemist department he sealed it with the Polis DiRaja Malaysia Seal No 299. SP27 identified P10A as the sealed bottle marked B containing the muscle specimen which he received from SP12. He put it in the envelope marked B ('P10') which he then sealed with Polis DiRaja Malaysia No 299 seal. SP27 identified P11A as the sealed bottle marked C which he received from SP20 containing the hair specimen. He put it in the envelope marked C ('P11') which he then sealed with the Polis DiRaja Malaysia No 299 seal. P27 identified P12A as the plastic container marked D which he received from SP20 containing the nail specimen.

[133] SP27 also received from SP20 three test tubes marked A1, A2 and A3 containing blood sample taken from SP8 in three separate envelopes similarly marked A1, A2 and A3. SP27 identified P13A as the test tube marked A1 and P13 as the envelope marked A1. He sealed the envelope with the Polis DiRaja Malaysia Seal No 299. SP27 identified P14A and P15A respectively as the test tubes marked A2 and A3 contained in the envelopes marked A2 ('P14') and A3 ('P15') respectively. He sealed P14 and P15 with the Polis DiRaja Malaysia No 299 seal.

[134] SP27 also received from SP20, three test tubes marked B1, B2 and B3 containing SP7's blood samples in three separate envelopes marked B1, B2 and

B3. SP27 identified P16A as the test tube marked B1 and P16 as the envelope marked B1. SP27 sealed the envelope with the Polis DiRaja Malaysia No 299 seal. SP27 identified P17A and P18A as the test tubes marked B2 and B3 respectively, contained in envelopes marked B2 ('P17') and B3 ('P18'). SP27 sealed P17 and P18 with the Polis DiRaja Malaysia No 299 seal.

[135] On 12 January 2000 at about 12.23pm, SP27 handed over all the aforesaid exhibits to SP5 at the chemist department Petaling Jaya and was given official receipt ('P7').

[136] In his evidence SP5 confirmed that he received the exhibits as described in P7 from SP27. SP5 identified P9 as the plastic container marked 'A' containing the bone specimen which he received and used in his analysis. SP5 also identified the following exhibits:

(a) P10A as the bottle marked B containing muscle specimen, in envelope marked B (P10), which he received and used in his analysis;

(b) P11A as the bottle marked C containing hair specimen in envelope marked C (P11); and

(c) P12 as the bottle marked D containing nail specimen.

[137] SP5 identified P13A as the test tube labelled Rohani bt Abd Aziz ('SP8') containing the blood sample in sealed envelope marked A1 ('P13'), which he used in his analysis. SP5 identified P16A as the test tube labelled Shafiee bin Mohd Yusof (SP7) containing blood sample in sealed envelope marked B1 ('P16'), which he used in his analysis.

[138] SP5 also identified the following exhibits:

(a) P14A and P15A as the test tubes labelled Rohani bt Abd Aziz containing blood sample, in sealed envelopes marked A2 (P14) and A3 (P15) respectively.

(b) P17A and P18A as the test tubes labelled Shafiee bin Mohd Yusof, containing blood sample, in sealed envelopes marked B2 (P17) and B3 (P18) respectively.

[139] After carrying out his analysis, SP5 put back all the exhibits in their respective containers or envelopes and sealed them with the Jabatan Kimia Petaling Jaya No 1 seal. On 20 January 2000, SP5 handed all the exhibits over to SP18, who in turn handed them over to SP27. SP27 had the exhibits in his custody in his office until he brought them to court for the trial in this case.

[140] It is therefore clear that the prosecution had called as witnesses, all the persons through whose hands the exhibits in question had passed and I find that all of them had positively identified all those exhibits. From the evidence of these witnesses which I have dealt with at length, it is clear that SP12 and SP20 were together when the bone specimen (in P9), the muscle specimen (in P10A), the hair specimen (in P11A) and the nail specimen (in P12) were taken from the human body in P23 when the post-mortem was done. P20 assisted SP12. Indeed even SP27 was present at the post-mortem conducted by SP12. The exhibits, after being taken by SP12 were handed over to SP20 who, in the presence of SP12, labelled and sealed the containers containing the specimens before keeping them in the *peti mayat*. The evidence shows that the containers remained sealed when SP5 received them. So, whatever markings made on the containers and envelopes containing the specimens were known and familiar to SP12 and SP20. I find that except for the specimen regarding which SP20 initially made a slip when he said it was marked D instead of C (which error he actually quickly rectified), there is nothing to show that any error was made in the markings on P9 and P10A. These markings had enabled SP12 and SP20 to identify the exhibits in question in court. The same markings, together with other markings which SP27 and SP5 themselves made, had also enabled them to identify the same exhibits in court.

[141] As stated earlier, in respect of the blood samples, SP12 had marked the three test tubes containing the blood samples taken from SP8, with the marking A1, A2 and A3. SP12 had marked the three test tubes containing the blood samples taken from SP7 with the marking B1, B2 and B3. SP12 then handed them over to SP20. In this connection, learned counsel complained that the test tubes containing the blood samples were not sealed. However, according to SP20, although the test tubes were not sealed, they were covered tightly (*ditutup ketat*). SP20 put the six test tubes into six separate envelopes which he marked according to the contents. SP20 then sealed all envelopes with the Ketua Jabatan Pathology, Fakulti Perubatan, UKM seal, after which he kept them in the *peti mayat*. All these was done by SP20 in the presence of SP12. When SP27 received the envelopes, he sealed each of them with the Polis DiRaja Malaysia No 299 seal. When the exhibits were received by SP5, he found all these seals to be intact. The markings made by SP12 had enabled him and SP20 to identify these exhibits positively in court. The same markings, together with other markings which SP27 and SP5 themselves made, had also enabled them to identify the same exhibits in court.

[142] In the light of the overwhelming evidence which I have set out, I cannot accept that the minor discrepancy between the evidence of SP20 and SP12 in respect of the labelling of P9 and P10A as pointed out by learned counsel in his submission had created a material gap in the prosecution's case. Having considered the evidence of SP12, SP20, SP5 and SP27 in totality, I find

that there is no break in the chain of evidence regarding the material exhibits in this case. There is no doubt on the identity of the material exhibits, particularly, the exhibits in P9, P10A, P13A and P16A. I have no doubt that:

(a) the bone specimen (in P9) and the muscle specimen (in P10A) used by SP5 in his analysis, and later produced in the High Court, were the bone specimen and the muscle specimen obtained by SP12 from the human body in P23; and

(b) the blood samples in P13A and P16A which were used by SP5 in his analysis, and later produced in the High Court, were the blood samples obtained by SP12 from SP8 and SP7 respectively.

[143] I come to learned counsel's complaint regarding the possibility of a mix up in the exhibits after they were handed over to SP5. The same issue was also raised in the court below. In his evidence in re-examination SP5 said that upon receipt of the exhibits he put labels and markings on them before he proceeded to make extraction:

> Exhibit yang saya terima setelah saya catat label dan tanda-tanda saya buat *extraction*. Exhibit asal disimpan semula dalam *freezer*. Baki DNA dibuat dengan gunakan DNA *extract* sahaja. Jadi tiub yang berisi DNA *extract* ada tanda dan No. Makmal. Ia disimpan dalam Peti Simpanan (*Storage Box*). Box itu di dalam *freezer*. Tiub tidak boleh dimeterai sebab ia kecil. Peti Simpanan tidak dikunci. *Freezer* dikunci.

[144] It is therefore not surprising that in response to the complaint made, the learned trial judge said:

> Pengendalian barang-barang kes/sampel-sampel oleh Ahli Kimia tidak mungkin bercampur dengan eksibit lain sebab ia sudah diberikan nombor makmal. Kalau bercampur keputusan DNA berbeza kerana seorang anak mesti menunjukkan *alleles* daripada ibu dan ayahnya.

I agree.

[145] I revert to SP5's evidence on the DNA analysis. SP5 said that upon analysis he found the bone specimen A (in P9) and the muscle specimen B (in P10A) to have human origin. Further, upon the DNA analysis on the bone specimen A (in P9), muscle specimen B (in P10A), blood sample A1 (in P13A) and blood sample B1 (in P16A), SP5 found that the origin of the bone specimen A1 (in P9) and the muscle specimen B1 (in P10A) was the son of the donors of the blood sample A1 (in P13A) and the blood sample B1 (in P16A). The probability of the match was not less than 99.9%. This is what SP5 said in his evidence:

> Selepas itu saya jalankan analisis dan mendapati:

Cebisan tulang 'A' dan tisu 'B' adalah keturunan manusia (*human origin*). Tiada apa-apa barang yang *significant* dalam keratan kuku 'D'. Untuk *analysis* DNA profiling atas cebisan tulang 'A', tisu 'B', *specimen* darah A1 dan *specimen* darah B1. Keputusan analisis DNA menunjukkan bahawa punca specimen 'A' (tulang) dan 'B' (tisu) adalah anak lelaki kandung kepada penderma darah A1 dan B1. *The probability of the match is not less than* 99.9%.

Saya tidak jalankan analisis atas barang kes 'A2', 'A3' dan 'B2' dan 'B3' sebab ia dari punca yang sama.

Saya tidak buat ujian blood *grouping* sebab ujian DNA adalah lebih tepat.

Setiap manusia ada 23 pasang *chromosome* iaitu *where the DNA is*. Maknanya jumlahnya ada 46 *chromosome*. Budak mewarisi 23 *chromosome* daripada ayahnya dan 23 *chromosome* daripada ibunya. Masa buat analysis kita akan bandingkan *profile* ayah dan ibunya bersama dengan budak itu. Dalam makmal kita buat perbandingan 9 loci.

Untuk tentukan jantina kita lihat (*check*) *sex chromosome*. Jadi kalau *sex chromosome* ialah xx ia adalah perempuan, jika xy ia adalah lelaki. Dalam kes ini ia xy jadi ia adalah lelaki. Maksud *Probability* 99.9% ialah *the source of the tissue and the bone is the son of A1 and B1 (blood donors)*. Untuk mencari *frequency* (kekerapan) kita ambil melalui *data base*.

[146] The qualification of SP5, who was then the Deputy Head of the Serology and DNA Section of the Chemistry Department Petaling Jaya, was not challenged by the defence. Having considered his qualification, training and experience as a government chemist since 1977, I find that SP5 was a competent and qualified witness to have given evidence on the DNA analysis in this case. In his evidence SP5 said the technique used by him in his analysis was polymerase chain reaction-short tendem repeat (PCR-STR). He had produced the summary of the STR results ('P8'). He also explained his analysis. As I have said, the defence did not seriously challenge the evidence of SP5 pertaining to his DNA analysis. Having considered SP5's evidence, I find nothing to show that his evidence was inherently incredible. The defence had not adduced any evidence to the contrary by another expert. In my view, the court was entitled to accept the evidence of SP5 on his DNA analysis and his findings thereto.

[147] In explaining in simple terms the meaning of the probability of the match being not less then 99.9%, SP5 had said that the source of the bone specimen A (in P9) and the muscle specimen B (in P10A) was the son of donors of the blood sample A1 (in P13A) and the blood sample B1 (in P16A). The donors of the blood samples in P13A and P16A were SP8 (Along's mother) and SP7 (Along's father) respectively. This vital evidence of SP5, which to my mind, by itself, is sufficient to establish the identity of the human body found in P23, stands together with the following evidence:

(a) the evidence that of the three sons of SP7 and SP8, only Along went missing;

(b) the evidence of SP12 regarding identification of sex by the examination of the structure of the skeleton of the human body found in P23;

(c) the evidence of SP17 regarding the examination of dental arrangement of that human body;

(d) the evidence SP12 and SP17 on the evidence of identification by photo dental model superimposition;

(e) the evidence of SP 12 that:

(i) P23 was tied at its end with a strip of cloth from a part of a pair of Levis jeans with a label written 'W28 L30 501 4589';

(ii) a strip of cloth which appeared to be a part of a pair of jeans was found tied around the right and the left ankle of the human body;

(iii) two strips of cloth from part of a pair of jeans were found around the bone of the neck of the human body;

(iv) a piece of cloth from the front part of a pair of jeans was found in P23 with four buttons,

(f) the evidence of SP9 (Along's brother) that Along had three to four pairs of size 28 Levis 501 jeans of various colours including black, dark blue and light blue. All of Along trousers had four buttons in front;

(g) the evidence of SP13 that when he last saw Along in the early morning of 26 November 1999, Along was wearing dark coloured jeans.

[148] Considering the totality of all the evidence which I have just set out, there is no doubt in my mind that the human body found in P23 was the body of Along. That evidence and the evidence of SP12 on his post-mortem on the human body in P23, proves beyond reasonable doubt that Along had died. The question is was the death of Along caused by or in consequence of the act of the appellant?

[149] This takes me back to the effect of the circumstantial evidence which I have discussed thus far.

[150] The approach which the court should take in dealing with circumstantial evidence had been elucidated in numerous authorities. In *Public Prosecutor v Hanif Basree bin Abdul Rahman* [2008] 3 MLJ 161; [2008] 4 CLJ 1, Zaki Tun Azmi PCA, in delivering the judgment of the Federal Court, said at p 172 (MLJ) and pp 16–17 (CLJ):

> [27] Circumstantial evidence is defined in no better words than in the remarks in the case of *Idris v Public Prosecutor* [1960] MLJ 296, which quoted Lord Cairns' in the House of Lords case of *Belhaven and Stenton Peerage* (1875) 1 App Cas 278 at p 279:

A My Lords, *in dealing with circumstantial evidence we have to consider the weight which is to given to the united force of all the circumstances put together. You may have a ray of light so feeble that by itself it will do little to elucidate a dark corner. But on the other hand you may have a number of rays, each of them insufficient but all converging and brought to bear upon the same point and when united, producing a body of illumination* B *which will clear away the darkness which you are endeavouring to dispel.*

[28] The learned trial judge in *Idris v Public Prosecutor* said:

In other words circumstantial evidence consists of this: that *when you look at all the surrounding circumstances, you find such a series of undesigned, unexpected coincidences* C *that, as a reasonable person, you find your judgment is compelled to one conclusion. If the circumstantial evidence is such as to fall short of that standard, if it does not satisfy that test*. If it leaves gaps then it is of no use at all. As I have stated this case depends entirely upon circumstantial evidence. (Emphasis added.)

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[151] With the aforesaid approach in mind I turn to the circumstances in the chain of circumstantial evidence in this case to consider where the totality of the evidence leads me to?

E **[152]** The items of evidence enumerated in paras [35]–[43] of this judgment beginning with the evidence SP6 leaving Along at the place where he parked his car at Pandan Jaya at about 10pm on 25 December 1999, after returning from Shah Alam, up to the evidence of SP13 leaving the appellant at Pandan Jaya at about 2.15am 26 December 1999, after coming back from KM 28, are very F important. The evidence reveals the events which took place within a period of about three hours before Along was last seen alive by SP13. The evidence establishes that the appellant was the last person who was with Along when Along was last seen alive, and that between the time SP13 left the appellant and Along at KM 28 and the time SP13 came back to the same place, the appellant G was with Along. In short the appellant had the opportunity to commit the murder.

[153] The evidence also reveals what the appellant did in the course of the journey from Pandan Jaya to KM 28. The appellant dictated to SP13 the routes H to be taken, when to stop and when to move on and which turns to take. The appellant and Along sat at the rear of the car. Along the way, the appellant asked Along with whom had he gone out and where had they gone to. Along did not answer. The appellant had asked Along the same question repeatedly. The evidence also reveals that the appellant asked Along repeatedly whether he I knew Salina Ali (SP6) and Along answered only once that he knew Salina Ali. Then there is evidence that the appellant also asked Along repeatedly regarding the extent of his relationship with SP6. When the appellant raised his voice, Along answered that they had gone only to the extent of kissing (*cium sahaja*). After that answer by Along, slapping sounds were heard from the rear of the car

and then Along was heard asking for forgiveness. The evidence shows that the slapping stopped when SP13 told the appellant to stop. It is obvious that what took place in the car between the appellant and Along was not an ordinary discussion or a cordial chat. To me the evidence discloses an 'interrogation' of Along by an angry and jealous man.

[154] All these items of evidence when considered together with the evidence of the discovery of Along's body at KM 28 provides strong basis to incriminate the appellant with the crime. But then the evidence against the appellant does not end there. The evidence at para [48] of this judgment shows that on 26 December 1999 SP7 invited the appellant, and his family to come to his house. Earlier on, SP7 was informed by SP10 that she had seen the appellant at the place where Along's car was parked on the night of 25 December 1999. The appellant, SP6 and his family came to SP7's house at about 6pm on 26 December 1999, and they broke their fast there. SP7 asked the appellant whether he was at the place where Along's car was parked the previous night? The appellant denied that he was there. In my view this was a deliberate lie because SP10 had testified that after she saw Along at Jalan 3/10 Pandan Jaya at about 10.30pm on 25 December 1999, she saw the appellant in a car which was then in the process of being parked, also at Jalan 3/10 Pandan Jaya. There is no reason at all for the appellant to lie. If he had nothing to hide, that breaking of the fast session at SP7's house would surely have offered the appellant the best opportunity to tell Along's parents what he later said in his defence (if that was the truth) — that on the night on 25 December 1999 he had met Along at Pandan Jaya and that both of them then went for a drive in SP13's car until KM 28 when they turned back to Kuala Lumpur. On the way Along wanted to ease himself and SP13 stopped the car. He and Along alighted from the car and both of them sat on the on the railing at the roadside. SP13 left them there. He then asked Along about his relationship with SP6. At the end of their conversation, Along said, 'Abang pandai-pandailah jaga isteri Abang' and then got up and walked away in the direction of Kuala Klawang. If that was what had actually happened that night, the appellant should have disclosed it to SP7 and SP8, who were then terribly worried about their missing son and were frantically searching for any clue as to his whereabout. Instead, what the appellant did was to lie to SP7. In fact the appellant even had the audacity to comfort SP8 that he was also making effort to search for Along. In my judgment, the appellant's lie was a reflection of his consciousness of his guilt, and is therefore corroborative evidence against him. In this regard in *Syed Ali bin Syed Abdul Hamid & Anor v Public Prosecutor* [1982] 1 MLJ 132, Salleh Abas FJ (as His Lordship then was) said:

> Apart from the fact that appellant No 2 had possession and control of the car during the relevant period, ie, between the evening of 13 August and forenoon of 15 August 1977 and the fact that he had opportunity to conceal the opium in the car during the period, there are two other circumstances which go to show that appellant No 2 had

the necessary knowledge. We recall that he told PW4 that the purpose of borrowing the car was to go to Trengganu. This was a deliberate lie as he never intended to go to Trengganu at all but to Singapore, which he did. We also recall that he told PW4 that he needed the car for two days. And as such there was no reason at all for him to see PW4 again in the evening of 14 August for permission to use it further on 15 August. Such permission was already given to him. In other jurisdictions a false statement made by an accused person concerning the surrounding circumstances in which an offence was committed whilst he had an opportunity to commit the offence can be regarded as a corroboration of the evidence against him: *Eade v The King* (4) and also *Regina v Lucas (Ruth)* (5). We accept the decisions in these cases to be good law. In this case we hold that the representation he made to PW4 regarding the purpose of borrowing the car was a deliberate lie and is therefore a corroborative evidence against him for which he must explain. Such lie is a reflection of his consciousness of guilt as regards the use he intended to make of the car in question.

[155] Then there is the evidence from SP13 that when he came back to KM 28 at about 1.30am on 26 December 1999, he saw the appellant standing alone. Along was not there. When SP13 asked the appellant where Along was, the appellant said we go back and leave him (*kita balik biarkanlah dia*). When SP13 asked the appellant again repeatedly, the latter kept quiet and appeared to be in deep thought. There is no reason for the appellant to be quiet. If he had nothing to hide and if it was true that Along had suddenly left him in the midst of their conversation and walked away in the direction of Kuala Klawang, there is no reason why he did not want to disclose that to SP13.

[156] The evidence of the strange conduct of the appellant does not end there. After 26 December 1999, SP13 read in the newspapers that Along was kidnapped. Later, when he met the appellant at the office, SP13 asked the appellant about it. The appellant did not give any answer except to say that if there was anything he would be responsible (*Apa-apa hal saya bertanggungjawab*). The immediate question that one wants to ask is why did the appellant react that way? What was really in his mind when he said that? To me the puzzling remark by the appellant was not consistent at all with the behaviour of some one who had nothing to do with the death of Along.

[157] There is yet another item of evidence which must be thrown in the scale in evaluating the case against the appellant. It is the evidence of motive. The evidence of SP6 which I have set out elsewhere in this judgment, unveils the intimate relationship between SP6 and Along, and that they had often gone out together. Because of that there were occasions when SP6 had misunderstanding with the appellant. Indeed, SP6 admitted that she was scolded by the appellant for being too close with Along. It was difficult for SP6 to reveal the actual extent of her relationship with Along, and this is not unexpected. In re-examination, SP6 said her relationship with Along was

'macam adik dengan kakak'. However, earlier on in cross-examination, SP6 admitted that her relationship with Along was more than close:

Soalan: Awak ada hubungan dengan Along yang lebih dari kenal rapat?

Jawapan: ia.

[158] In cross-examination, SP6 also disclosed that sometimes in October 1999, Along and his band had a stage show in Sarawak for three days. SP6 accompanied Along. The appellant did not follow SP6 to Sarawak. The appellant stayed behind to take care of their children. According to SP6, the organiser of the said show provided only one room. So, she and Along slept in the same room at night. According to SP6, the appellant did not know that. He had not asked and SP6 did not inform him. It is therefore difficult to say with certainty the true extent of the relationship between SP6 and Along. According to SP13, when asked by the appellant about the extent of his relationship with SP6 Along answered that they had only gone to the extent of kissing. Whatever was the true limit of the intimate relationship between SP6 and Along, it appears to have created a marital problem between the appellant and SP6. It appears to me that the intimate relationship between SP6 and Along, was sufficient to have prompted the appellant to seek the help of SP13 in early 1999, to observe the movement of SP6 and Along. On that occasion, SP13 had observed SP6 and Along travelling in the same car. The next day, SP13 informed the appellant. It seems to me that the relationship between SP6 and Along had, on 25 December 1999, reached a point where it prompted the appellant to decide to act and confront Along. In confronting Along and taking him for a drive in SP13's car to KM 28 that night, and questioning him intensely on the way, the appellant was spurred by jealousy and anger which to my mind was a strong enough motive. To establish a case of murder, motive is not an element which must be proven. However, although motive is not a necessary ingredient to be established in the offence of murder, it would if shown tend to support the case against the accused so charged (see *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232 at p 282, per Abdoolcader FJ and *Parimal v State* [1986] Cr LJ 220 at p 227). Such a motive was established in the instant appeal.

[159] All the items of circumstantial evidence which I have dealt with thus far must be considered together with the evidence of the recovery of Along's body in P23, which was found hidden in some bushes down a steep slope about 20 metres from the road surface at KM 28. Any one of those circumstances standing alone, or any two or three of them may not be sufficient. But it is the cumulative effect of all the circumstances that is most crucial. When all the items of circumstantial evidence are considered cumulatively, where does the totality of them leads us to? Does it or does it not lead us to the irresistible inference and conclusion that the appellant committed this crime? Or is there

some reasonably possible explanation of the circumstantial evidence? (see *Sunny Ang v Public Prosecutor* [1966] 2 MLJ 195).

[160] In this connection, learned counsel for the appellant contended the other possible explanation to account for the death of Along was that he was kidnapped and murdered by a person or persons unknown and who were still at large. Learned counsel argued that the police and later the learned trial judge should not have brushed aside the two telephone calls received by Along's family as mere ploy (*helah*). Submitting further on this issue, learned counsel said in his written submission in reply:

> Along is capable of being kidnapped as he is a famous Singer in the 'Kumpulan Spoon' and is a man of standing in society. It is submitted that when he walked away from the appellant he was kidnapped and when the demands for the ransom of RM500,000.00 was not met, he was murdered, his personal belongings taken and later dumped someway near the whereabouts of KM 28.

[161] I do not think the learned trial judge can be faulted for dismissing the kidnap theory advanced by the defence. The first telephone call was received by SP9 on the night of 26 December 1999 from a caller who said:

> Lu punya Abang ada sama Gua. Gua mahu wang RM500,000/=. Jangan report polis. Lagi 2 hari Gua telefon.

[162] On 26 December 1999 actually SP7 had lodged a police report. Then on 29 December 1999 at about 3pm, SP7 received a telephone from a caller who said that they had Along in their custody and that they demanded RM500,000. In other words from what was said in the second call, the caller appeared to be still interested in the ransom money. Yet, the strange thing is that the caller made no mention as to how and where the money was supposed to be paid and whether they would give further instruction later or whether they would call again.

[163] According to SP27 the police managed to trace the call and found that it was made in the Gombak area. On 26 December 1999 the police made surveillance on the public telephone from which the call was made but nothing further turned on the surveillance. SP27 had interviewed SP9 regarding the call. From that interview SP27 concluded that the dialect used did not reflect that the call was made by a Chinese. To me the most important reason as to why the kidnap theory must be rejected as being not in the least probable in the circumstances of this case is this. It is too much of a coincidence that Along was kidnapped as he walked away from KM 28 by the so-called kidnapper (who happened to be there at the material time), and that after the purported ransom demand was not met a few days later, the kidnapper murdered him, bundled

his body in P23, came back to KM 28 (ie at the place where Along was last seen alive with the appellant) and then dumped it in the bushes at the slope there.

[164] In conclusion, after careful consideration of all the evidence available in this case, I find that the chain of circumstances incriminating the appellant is complete and that the appellant was so firmly entangled in the web of circumstantial evidence which I have dealt with at lengh that he cannot come out of it. The totality of the circumstantial evidence in this case (even without the evidence of the information in P32 which was admitted by the learned trial judge under s 27 of the Evidence Act 1950), leads me to one conclusion only — that the appellant had caused the death of Along.

[165] The learned trial judge was therefore right in concluding that the appellant had caused the death of Along.

[166] On the question of intention, the learned trial judge had considered the evidence of SP12 and the evidence of the gruesome discovery of the naked body of Along in P23 with cloth around the bone of the neck and with the right and left ankle tied with another piece of cloth, and concluded that the intention to kill under s 300(a) of the Penal Code had been proven. I agree with his conclusion. In this regard I have not lost sight of learned counsel's submission on SP12's evidence on the cause of death. Learned counsel submitted that SP12 could only say that the cause of death was probable ligature strangulation. Learned counsel also pointed out in his evidence under cross-examination, SP12 admitted that if there was no cloth found tied around the neck area of the human body, he would not have able to give the cause of death as such:

> Kemungkinan besar punca kematian ialah jerutan di leher. Saya tidak dapat nyatakannya dengan muktamad. Ia boleh jadi akibat cekikan. Saya sampai kepada kesimpulan si mati mati akibat jerutan sebab ada lilitan di tulang leher dan tiada sebab-sebab fatal yang lain. Jika tiada lilitan di tulang leher saya tidak boleh membuat kesimpulan sebab kematian akibat jerutan di leher.
>
> Tulang leher tidak patah.

[167] In order words, the defence contention was that the cause of death was not certain and that therefore it was doubtful whether intention to cause death had been proven. Almost similar submission was made in *Ahmad Najib bin Aris v Public Prosecutor* [2007] 2 MLJ 505, in response to which Abdul Aziz Mohamad JCA (now FCJ), delivering the judgment of this court said, as p 544:

> [128] As regards the charge of murder, the appellant's counsel argued that the cause of death being unspecific, the mens rea, that is the intention to cause death, is uncertain because it would depend on the actual cause of death. Whether the cause of death was strangulation, or the infliction of an injury on the victim that caused

the internal bleeding, or whether it was a combination of both, or whether it was burning after the victim, who would then have been alive, had been placed in the manhole, on the evidence, viewed as a whole, it was the appellant who did to the victim whatever it was that caused her death and, viewing the evidence as a whole, including the fact that the appellant had raped the victim, there would be no basis for entertaining any probability that the appellant did what he did other than with the intention of causing the death of the victim. The conviction for murder was therefore right.

[168] In the present appeal, I have said earlier that the totality of all the circumstantial evidence leads me to one conclusion only — that the appellant had caused the death of Along. Whether the cause of death was ligature strangulation, or whether it was because of suffocation after being tied at the left and right ankles and around the neck, and then bundled into P23 which was then tied at its end and left in the bushes at the slope at KM 28, considering all the evidence as a whole, there is only one conclusion that can be arrived at — ie that the appellant did what he did to Along that caused his death with the intention of causing death.

[169] Thus, the learned trial judge was right in holding that the prosecution had proven a prima facie case of murder against the appellant.

DEFENCE OF THE APPELLANT

[170] In his grounds of judgment the learned trial judge dealt at length with the evidence of the appellant in his defence. He considered and tested the appellant's evidence against the evidence adduced by the prosecution. In the end he found that the appellant had failed to raise any reasonable doubt in the prosecution's case.

[171] In the nutshell the story of the appellant is this. He had called SP13 to Pandan Jaya to have dinner with him. After dinner, they had gone for a drive in SP13's car around Jalan Pandan, in the course of which by chance the appellant saw Along's car. A few minutes later the appellant saw SP6's car stopping behind Along's car. He saw Along alighting from SP6's car. Then SP6 drove off. The appellant saw Along got into his car and drove off. Later SP13 also drove off. On the way, the appellant spotted Along's car and he told SP13 about it. SP13 then turned back to follow a different road and stopped at a parking lot. Then the appellant saw Along's car again. He alighted from SP13's car and walked to Along's car. When Along saw him, Along alighted from his car. Along spoke to him. The appellant told Along that he wanted to have a discussion with Along. He said he wanted to ask Along why at times SP6 came back late from work. Along followed him to SP13's car and both of them got into SP13's car and sat at the back. The appellant said he did not direct SP13 to drive in any

particular direction. SP13 drove his car to the Cheras highway. According to the appellant, this was because Along said he wanted to see his friend in Cheras. The appellant admitted that on the way he talked to Along, as he wanted to verify SP6's movement. The appellant denied that in the course of the conversation, Along had admitted kissing SP6.

[172] The appellant said he had never at any time used force on Along. Although he maintained that he did not direct SP13 to drive in any particular direction, the appellant admitted that he had asked SP13 to stop and turn back to Kuala Lumpur. After travelling for about 15 minutes in the direction of Kuala Lumpur, Along said he wanted to ease himself. SP13 stopped the car. The appellant and Along alighted from the car, after which SP13 told the appellant, 'kau tunggulah Kob di sini sekejap'. SP13 then drove off. Along eased himself. Then both of them sat on the railing by the road side and continued to talk to each other for about 10–15 minutes. The appellant asked Along about his relationship with SP6. Along's reply was, 'hubungannya adalah antara adik dan kakak'. Along did not say that he had an affair with SP6. The appellant said that he did not quarrel with Along, Along was cooperative and that Along answered his questions. However, according to the appellant, in the end Along appeared to be uneasy with his questions. Along said, 'Abang pandai-pandailah jaga isteri Abang'. Along then left the appellant and walked in the direction of Kuala Klawang. The appellant told Along to wait but Along continued to walk away. Thirty to forty minutes later SP13 arrived back. When asked by SP13, the appellant said Along had walked away. The appellant got into the car and SP13 then drove back to Kuala Lumpur.

[173] The story about Along wanting to go to Cheras to see his friend and about Along wanting to ease himself on the way, were important elements in the appellant's explanation as to how SP13 had stopped his car at KM 28. Both these elements were never mentioned in the SP13's evidence. In fact they were never raised by the defence or put to SP13 when he was giving evidence. The story of the appellant that Along had left him and walked away towards Kuala Klawang was most crucial to the appellant's explanation in accounting for what happened between them after SP13 left them. That story was also important to explain why Along was not around when SP13 came back. As I have said, if that story was true, and if the appellant had nothing to hide, there was no reason for him to withhold it from Along's parents on 26 December 1999 at the breaking of the fast session at the latter's house. The appellant himself had admitted in evidence that he met Along at the place where Along had parked his car at Pandan Jaya on the night of 25 December 1999. If that was an ordinary and innocent encounter which was not connected with any hidden evil design, there was no reason for the appellant to lie to SP7 on 26 December 1999.

[174] The appellant maintained that the reason he met Along on the night of 25 December 1999 was to seek confirmation about the whereabouts of SP6 on the occasions when she came home late. According to the appellant, it was suppossed to be an ordinary conversation. If that was so then there were many other more comfortable places in Kuala Lumpur or even Pandan Jaya for them to go to. There is no reason for the appellant to have taken Along for a drive up to KM 28 in unearthly hour.

[175] The appellant claimed that the conversation with Along in the car on the way to KM 28, was an ordinary conversation and had taken place in a normal matter. He did not use any threat or force on Along. So too was the conversation that took place when they were sitting at the railing at KM 28. According to the appellant, there was no misunderstanding between the two of them. The conversation took place in a normal manner. Along was cooperative. If that was so, then why did Along suddenly become uneasy and then walked away in the dark on an isolated road with jungle on both sides of it? I cannot find any logical explanation for it. However, one thing is clear. About 10 days later the naked body of Along was found in P23 at the slope of the road which was also at KM 28.

[176] Having considered all the evidence and submission in this case with utmost care, I find that the 'evidence is so strong against' the appellant as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable' (see *Liew Kaling & Ors v Public Prosecutor* [1960] MLJ 306 at p 311 per Thompson CJ quoting Denning J in *Miller v Minister of Pensions* [1947] 2 All ER 372 at p 373). The learned trial judge was right in holding that the prosecution had proven its case against the appellant beyond reasonable doubt.

[177] In the result I dismiss the appeal and affirm the conviction and the death sentence passed on the appellant.

Rayuan ditolak.

Dilaporkan oleh Kanesh Sundrum